TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1911

No. [redacted] 38

CHARLES F. CONSAUL AND IDA M. MOYERS, ADMINISTRATORS OF THE ESTATE OF GILBERT MOYERS, DECEASED, APPELLANTS,

vs.

HORACE S. CUMMINGS, ADMINISTRATOR OF THE ESTATE OF GEORGE B. EDMONDS, DECEASED.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

FILED APRIL 24, 1912.

(21,630.)

(21,630.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1910.

No. 206.

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vs.

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INDEX.

	Page.
Caption to transcript No. 1361	1
Transcript from the supreme court of the District of Columbia (No. 1361)	1
Caption	1
Bill of complaint	1
Complainant's Exhibit No. 1—List of claims	6
No. 2—Letter from Gilbert Moyers to J. W. Butterfield, July 21, 1899	7
No. 3—Letter from Gilbert Moyers to J. W. Butterfield, August 3, 1899	7
No. 4—Letter to J. W. Butterfield, September 11, 1899	7
Answer of Gilbert Moyers	8
Memorandum: Joinder of issue on answer filed	11
Order on Secretary of Treasury to furnish certain information	11
Motion to obtain information	12
Copies of original papers furnished	13
Motion for leave to amend answer	15

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., SEPTEMBER 26, 1910.

	Page.
Affidavit of Gilbert Moyers	15
Motion to amend answer overruled	16
Motion for leave to amend answer, &c	16
Affidavit of Gilbert Moyers	17
Leave granted to file supplemental answer	18
Supplemental answer	18
Motion to strike out part of amended answer	20
Portion of supplemental answer stricken out	21
Joinder of issue	21
Decree for accounting, &c	22
Receivers appointed; appeal and penalty of supersedeas bond fixed	23
Testimony on behalf of complainant	24
Testimony of Horace S. Cummings	25
John W. Butterfield	33
James B. Edmonds	42
Horace S. Cummings (recalled)	47
John W. Butterfield (recalled)	52
Testimony on behalf of defendant	54
Testimony of John C. Scott	54
John C. Scott (recalled)	63
Thomas Dant (colored)	66
Ezra Nat Hill	70
Christopher N. Wilson	78
John C. Scott (recalled)	81
Thomas J. Healy	82
V. B. Edwards	91
Thomas J. Healy (recalled)	96
P. E. Dye	98
Cyrus Snyder	103
John C. Chaney	108
George W. Taylor	113
George W. Taylor (recalled)	121
Christopher N. Wilson	128
P. E. Dye (recalled)	130
Gilbert Moyers	133
G. W. Z. Black	152
Gilbert Moyers (recalled)	154
Exhibit M. N. R. No. 1—Agreement of counsel	161
Nos. 2, 3, and 4—Checks	162
No. — —Letter from L. Bagnell to Gilbert Moyers, April 8, 1892	162
Letter from J. R. Hornbaker to Gilbert Moyers, May 19, 1894	163
Letter from H. K. Martin to Gilbert Moyers, October 29, 1894	163
Testimony on behalf of complainant in rebuttal	164
Testimony of Edward A. Balloch, M. D	165
William M. Goodlove, M. D	169
Horace S. Cummings	173
H. Le Roy Mark	177
Charles A. Eccleston	179
John R. Carmody	181
H. Le Roy Mark (recalled)	182

	Page.
Testimony of G. W. Z. Black	183
Horace S. Cummings (recalled)	186
John W. Butterfield (recalled)	192
Letter from G. W. Z. Black to E. L. Wilson, May 22, 1900	192
Complainant's Exhibit in Rebuttal No. 1—Letter from A. B. Richardson to Davis & Tucker, March 3, 1900	193
Complainant's Exhibit in Rebuttal No. 2—Letter from Davis & Tucker to superintendent of Soldiers' Home, Hampton, Va., and reply, March 17, 1900	193
Complainant's Exhibit in Rebuttal No. 3—Letter from Gilbert Moyers to H. S. Cummings, May 26, 1899	194
Complainant's Exhibit in Rebuttal No. 4—Letter from Susan Merrill to G. B. Edmonds, April 9, 1886	194
Cause referred to auditor	195
Report of auditor	196
Supersedeas bond canceled	199
Certified copy of papers with letter of transmittal from Treasury Department	199
Report of auditor	202
Exceptions of defendant to auditor's report	214
Exceptions of complainant to auditor's report	215
Motion to open report of auditor	218
Cross-bill	219
Report of auditor	220
Testimony of Gilbert Moyers	222
Thomas J. Shelton	232
Thomas J. Shelton (recalled)	235
Gilbert Moyers (recalled)	237
Thomas J. Shelton (recalled)	244
Gilbert Moyers (recalled)	246
P. Edwin Dye	275
Thomas J. Healy	277
William W. Jackson	278
John C. Scott	279
Thomas J. Healy (recalled)	285
Gilbert Moyers (recalled)	291
Horace S. Cummings (recalled)	292
Clarence Corson	297
Horace S. Cummings (recalled)	299
Clarence Corson (recalled)	299
Horace S. Cummings (recalled)	303
Charles Cowles Tucker	305
Robert Johnson (recalled)	306
Gilbert Moyers (recalled)	309
Defendant's motion to remand cause to auditor overruled, appeal, and penalty of bond fixed	313
Memorandum: Appeal bond filed	314
Stipulation: Time extended to file transcript	315
Order extending time for filing transcript in Court of Appeals	315
Time extended to file transcript	316
Time further extended to file transcript	316
Time further extended to file transcript	317
Cause revived and defendants substituted	317

Page.
Directions to clerk for preparation of transcript of record on appeal..... 318
Clerk's certificate..... 320
Addition to record per stipulation of counsel..... 320
Exhibit H. B. C. No. 1—Agreement between Moyers and Edmonds. 321
Memorandum as to manila jacket No. 1..... 329
Complainant's Exhibit No. 2—Claim of Henry T. Cate..... 330
No. 3—Claim of Jane A. Sutton..... 333
No. 4—Claim of Richard Butler..... 335
No. 5—Claim of John P. Davidson..... 336
No. 6—Claim of Christian Ubele..... 342
No. 7—Claim of William R. Wellborn..... 344
No. 8—Claim of Jasper Gall..... 345
No. 9—Claim of Page Braboy..... 347
No. 10—Claim of Mary J. Dunn..... 348
No. 11—Claim of John Ehs..... 349
Memorandum as to manila jacket No. 12..... 350
Complainant's Exhibit No. 13—Claim of Anna Hunt..... 350
No. 14—Claim of Hattie E. Ladd..... 353
No. 15—Claim of J. H. Maury..... 356
No. 16—Claim of Wilson Williams..... 357
No. 17—Claim of D. S. Deloatch..... 358
No. 18—Claim of N. K. Thornton..... 360
No. 19—Claim of Wm. T. Fauber..... 361
No. 20—Claim of Henry Fitzhugh..... 362
No. 21—Claim of John R. Hornbaker..... 367
No. 22—Claim of Thomas W. Russell..... 369
No. 23—Claim of Moses Baylor..... 370
No. 24—Claim of Joseph L. Roberts..... 371
No. 25—Claim of George Shaw..... 372
Memorandum as to manila jacket No. 26..... 373
Fee agreement between Susan S. Merrill and Geo. B. Edmonds.... 373
Memorandum as to Exhibit G. M., relating to letter of Edmonds to Moyers regarding claim of Susan Merrill..... 374
Unsigned paper relating to claim of Susan S. Merrill..... 374
Memorandum as to Complainant's Exhibit in Rebuttal No. 1..... 374
Memorandum as to Complainant's Exhibit in Rebuttal No. 2..... 374
Memorandum as to Complainant's Exhibit H. S. C. No. 1..... 375
Memorandum as to Complainant's Exhibit in Rebuttal No. 3..... 375
Memorandum as to Complainant's Exhibit in Rebuttal No. 4..... 375
Memorandum as to Exhibit C..... 375
Designation of record by appellant..... 375
Designation of record by appellee..... 376
Instructions to copy additional papers in transcript of record..... 377
Endorsement on manila jacket of Gilbert Moyers relating to claim of John Ehs..... 378
Letters of J. M. Harding to Gilbert Moyers..... 379
Endorsement on manila jacket of Gilbert Moyers relating to claim of Roderick Williams..... 381
Entries in Moyers' docket relating to claim of Susan Merrill..... 382
List of papers from Court of Claims in claim of Susan Merrill..... 383
Stipulation of counsel as to exhibits..... 384
Stipulation of counsel as to printing record..... 387
Minute entry of argument, May 4, 1904..... 388

Page.
Minute entry of argument, May 5, 1904 388
Opinion of Mr. Justice Shepard, May 24, 1904 388
Decree of May 24, 1904 397
Motion by appellants to modify and enlarge the decree 398
Affidavit of Ida M. Moyers 400
Letter of George B. Edmonds to Gilbert Moyers, December 17, 1889 401
Minute entry of submission of motion to modify decree 402
Motion by appellee for a reargument or modification of decree 403
Minute entry of submission of motion for a reargument, &c 407
Opinion by Chief Justice Alvey denying appellants' motion to modify and enlarge decree 407
Order denying appellee's motion for reargument, &c 408
Caption to transcript No. 1778 409
Transcript from the supreme court of the District of Columbia (No. 1778) 409
Caption 409
Auditor's report of January 5, 1904 409
Claim of William Goddard 410
Edward S. Nace 410
Solomon Beery 410
John Young 411
R. H. Rue, administrator 411
The executors of Thomas Kidd 411
Isaiah B. Beans 413
John W. Fletcher 414
Schedule A attached to report 415
Account of fees collected by receivers 415
Schedule B attached to report 416
Testimony taken before auditor 417
Testimony of Mr. Cummings 419
Mr. Tucker 424
Clarence Corson 430
Mr. Tucker (recalled) 433
Gilbert Moyers 450
C. N. Wilson 461
George W. Z. Black 463
Ida May Moyers 465
Exceptions of defendants to report of auditor 469
Mandate of Court of Appeals, D. C. 471
Motion for order of reference to auditor 474
Petition for leave to introduce further evidence, &c 474
Order granting motion of September 24, 1904, &c 482
Order of reference 484
Auditor's report of May 1, 1906 485
Report of expenses incurred by Gilbert Moyers 491
Restatement of account 492
Restatement of account of auditor, filed January 5, 1904 493
Testimony taken before auditor 493
Testimony of George W. Hott 493
Cyrus Snyder 499
William E. Harvey 504
G. W. Z. Black 509
Francis L. Neubeck 514
Francis L. Neubeck (recalled) 518

Page.

Testimony of Francis L. Neubeck (recalled) 525
A. G. Maul 526
Horace S. Cummings 533
C. C. Tucker 538
Exhibit A—Cases in Edmonds' schedule 439
B—List of Edmonds' cases 540
C—List of cases not in court or on Moyers' books 545
Testimony of C. F. Consaul 545
G. W. Z. Black (recalled) 548
F. L. Neubeck (recalled) 550
John C. Eckloff 550
William E. Harvey (recalled) 552
John A. Sweeney 553
A. A. Birney 556
Exhibit C. F. C. No. 1—*In re* claim of Lucy A. Caldwell 557
No. 4—*In re* claim of Herbert Smith 559
No. 5—*In re* claim of Jane Edge 561
Exhibit H. S. C. No. 1—Account of expenses, &c 562
No. 2—Account of expenses, &c 572
No. 3—Account of expenses, &c 573
No. 4—List of pending cases 576
Exceptions of the complainant to the report of auditor 581
Stipulation of counsel as to time to file exceptions 583
Exceptions of defendants to report of auditor 584
Auditor's report of December 21, 1906 585
Account of partnership in respect to claims of Jane Edge, Herbert Smith, and Lucy A. Caldwell 590
Testimony taken before auditor, stipulations, &c 591
Testimony of George W. Z. Black 597
William W. Scott 607
Charles F. Consaul 614
Fee agreement 621
Memorandum of agreement of S. J. Adams 623
Testimony of Charles F. Consaul (recalled) 625
Letter of Gilbert Moyers to J. D. Edge, dated August 21, 1902 633
Letter of Gilbert Moyers to Mrs. S. J. Adams, dated March 18, 1903 634
Memorandum of agreement signed by Gilbert Moyers, Ida M. Moyers, and Charles F. Consaul 634
Testimony of R. W. Haynes 641
Ida M. Moyers 650
Ralph W. Haynes (recalled) 652
Charles F. Consaul (recalled) 654
Letter from George B. Edmonds to Gilbert Moyers, dated December 17, 1889 655
Exhibit H. S. C. No. 1—*In re* claim of Lucy A. Caldwell 655
No. 2—*In re* claim of Jane Edge 658
No. 3—*In re* claim of Herbert Smith 660
Letter from receivers to Gilbert Moyers, dated July 7, 1902 661
Letter from receivers to Gilbert Moyers, dated July 14, 1902 662
Letter from Lucy J. Eaton to Gilbert Moyers, dated March 10, 1903 662

Page.
Letter from Mrs. L. J. Eaton to R. W. Haynes, dated March 10, 1903 ... 662
Letter from R. W. Haynes to Mrs. L. J. Eaton, dated March 13, 1903 ... 663
Letter from Mrs. L. J. Eaton to R. W. Haynes, dated May 4, 1903. 663
Letter from Mrs. Lucy J. Eaton to R. W. Haynes, dated May 18, 1903 ... 663
Letter from R. W. Haynes to Mrs. L. J. Eaton, dated July 3, 1903. 663
Letter from Mrs. Lucy J. Eaton to R. W. Haynes, dated October 21, 1903 ... 664
Letter from R. W. Haynes to Mrs. L. J. Eaton, dated November 14, 1903 ... 664
Letter from Mrs. Lucy J. Eaton to R. W. Haynes, dated April 3, 1905 ... 664
Letter from Mrs. Lucy J. Eaton to R. W. Haynes, dated May 25, 1905 ... 664
Stipulation as to intervenor's evidence ... 665
Decree directing settlement of Barber claim ... 666
Exceptions of defendants to report of auditor, filed December 21, 1906 ... 667
Report of auditor, filed January 4, 1907 ... 667
Complainant's exceptions to report of auditor of January 4, 1907 ... 669
Intervening petition of George M. Barber ... 669
Answer of complainant to intervening petition ... 672
Stipulation as to substituting copy for original answer ... 673
Answer of defendants to intervening petition ... 673
Stipulation as to substituting copy for original answer ... 673
Decree ... 675
Appeal noted ... 677
Memorandum: Appeal bond filed ... 677
Order extending time to file transcript of record ... 677
Order further extending time to file transcript of record ... 678
Defendants' designation for transcript of record ... 678
Order further extending time to file transcript of record ... 680
Stipulation as to Exhibit R. G. D. No. 1 ... 680
Clerk's certificate ... 686
Suggestion of diminution of record and motion for writ of certiorari ... 687
Order granting writ of certiorari ... 688
Return to writ of certiorari ... 689
Petition of Horace S. Cummings, March 8, 1905 ... 689
Report of receiver, March 8, 1905 ... 692
Answer of defendants, March 10, 1905 ... 695
Writ of certiorari ... 700
Clerk's certificate and return ... 700
Minute entry of argument, February 4, 1908 ... 702
Minute entry of argument, February 5, 1908 ... 702
Opinion by Mr. Chief Justice Shepard, March 10, 1908 ... 703
Decree of March 10, 1908 ... 710
Caption to transcript No. 1980 ... 711
Transcript from the supreme court of the District of Columbia (No. 1980) ... 711
Caption ... 711
Mandate of the Court of Appeals ... 711
Mandate of the Court of Appeals ... 714
Order re-referring cause to auditor ... 716

	Page.
Auditor's report	717
Defendants' exceptions to report of auditor	720
Decree	722
Appeal noted and allowed	724
Memorandum: Appeal bond filed	724
Directions to clerk for preparation of transcript of record	724
Clerk's certificate	724
Minute entry of submission, March 12, 1909	726
Opinion by Mr. Chief Justice Shepard, March 16, 1909	726
Decree of March 16, 1909	726
Order allowing appeal to Supreme Court of the United States	727
Bond on appeal	727
Citation and service	728
Appellants' designation of transcript on appeal	729
Clerk's certificate	730

In the Court of Appeals of the District of Columbia

CHARLES F. CONSAUL ET AL., Administrators, Appellants,
vs.
HORACE S. CUMMINGS, Administrator, &c. } No. 1361.

a Supreme Court of the District of Columbia.

HORACE S. CUMMINGS, Administrator of the Estate of George B. Edmonds, Deceased, Complainant,
vs.
CHARLES F. CONSAUL and IDA M. MOYERS, Administrators of Gilbert Moyers, Deceased, Defendants. } In Equity. No. 20802.

UNITED STATES OF AMERICA, *District of Columbia*, } *ss*:

Be it remembered, that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:—

1 *Bill.*

Filed September 16, 1899.

In the Supreme Court of the District of Columbia, Holding an Equity Court for said District.

HORACE S. CUMMINGS, Administrator of the Estate of George B. Edmonds, Deceased, Complainant,
vs.
GILBERT MOYERS, Defendant. } Equity. No. 20802.

To the justice holding said equity court:

The complainant, Horace S. Cummings, respectfully shows unto the court as follows, to-wit:

1. The complainant is a citizen of the United States and a resident of the District of Columbia, and brings this suit as the administrator of the estate of George B. Edmonds, deceased.

2. The defendant Gilbert Moyers, is also a citizen of the United States and a resident of the District of Columbia, and is sued herein in his own right.

3. The complainant was, on the 22nd day of August, 1899, duly appointed administrator of the estate of the said George B. Edmonds, deceased, late a resident of the State of Virginia, by the county court of Fairfax county, State of Virginia, and duly qualified as such administrator.

4. On the 6th day of February, 1888, complainant's intestate and the defendant entered into an agreement in writing, a true copy of which is as follows:

2 "*Agreement.*

"Know all men by these presents, in duplicate, that the undersigned, attorneys of Washington, D. C., are special partners in the prosecution of the cases named in the schedule hereto attached now pending before the United States Court of Claims and the Congress of the United States, the fee agreed to be paid by the client in each case being the percentum of whatever may be recovered as is stated herein, and the agreement between the undersigned being that each shall have half of said fees and that each shall pay one-half of the expense incident to the prosecution of same, which expense is not to exceed two and a half per cent. of the amount that may be allowed upon said claim.

"And it is hereby agreed and understood that the said Gilbert Moyers shall represent and be associated with me in the prosecution of said claims before the Court of Claims and the Congress of the United States as joint attorney of record.

"It is hereby understood and agreed that the undersigned Gilbert Moyers is to advance the expenses incident to the prosecution of said claims.

Witness our hands this 6th day of February, 1888.

(Signed) GILBERT MOYERS.
(Signed) GEO. B. EDMONDS."

5. Among the cases named in the schedule attached to said agreement were those set forth in the schedule or list attached to this bill of complaint, made a part hereof and marked "Complainant's Ex. No. 1," which said schedule or list shows the name of the claimant in each case, when settled, the amount of his claim and the
3 amount due the said intestate's estate and the said defendant as their fees therein.

6. In pursuance of the terms of the said agreement or articles of partnership, between said intestate and the said defendant, the cases or claims mentioned in the preceding paragraph hereof, and others hereinafter mentioned, were prosecuted, judgments were rendered therein by the said Court of Claims and the Congress of the

United States by its act of March 3, 1899, appropriated the money to pay said judgments, and the said Gilbert Moyers collected the money due on all of said judgments, except those hereinafter mentioned. Since the said 3rd day of March, 1899, the said defendant has collected on account of the said judgments, as shown in Complainant's Ex. No. 1, the sum of $56,756, of which said sum there was due as fees to the defendant and said intestate's estate, the sum of $26,380.25, which said sum of $26,380.25 was distributable, under the terms of the said co-partnership agreement, one-half to the said defendant and one-half to the complainant, as administrator of the estate of said deceased (the said intestate having died prior to said March 3, 1899) subject to the right of the said defendant to receive such sum or sums of money as he may have rightfully expended in the payment of the legitimate expenses incident to the prosecution of said cases.

7. Complainant further shows unto the court that although it was the duty of the said defendant as surviving partner and as trustee, to account to the complainant as administrator of said intestate for the share of fees due the estate of said intestate under the partnership agreement as aforesaid, the said defendant has wrong-
4 fully and fraudulently failed and refused and still continues to wrongfully and fraudulently fail and refuse to render any account whatever to the complainant in the premises, as will appear from the letters of the said defendant and his attorney to complainant's attorney hereto attached, made a part hereof, and marked respectively "Complainant's Exs. Nos. 2, 3 and 4," and although complainant has made frequent and repeated demands upon said defendant for such accounting.

8. Complainant further avers that although it was the duty of the said defendant when he collected said partnership funds as aforesaid to deposit said funds as trust funds in a proper bank or banking institution prior to their distribution, he wrongfully and unlawfully deposited said trust moneys so received and collected by him as aforesaid, amounting in the aggregate to the sum of $26,380.25 as aforesaid in one or more banks, banking institutions or trust companies in the District of Columbia in his own name and to his own personal credit, and thereby commingled and confused the said trust fund with his own moneys unlawfully and illegally as aforesaid. What, if any, disbursements the defendant has made in said cases to the holders and owners of the judgments therein of the sum or sums of money due them after the deduction of the fees aforesaid, the complainant does not know, nor will the defendant advise him with respect thereto, although complainant is advised that said intestate's estate would be legally liable for any misappropriation or conversion by said defendant of any sum or sums so collected by him on account of said judgments, because of the partnership relation existing between said intestate and
5 said defendant.

9. Complainant further shows unto the court that the said

defendant is wholly insolvent, except for the possession by him of the money hereinbefore mentioned, and other moneys similarly received by him for and on account of fees for services rendered by him in association with others in similar cases to those hereinbefore mentioned, and in respect to which the defendant is now under suit in a large number of cases now depending in this court, as will appear by the records thereof, and the moneys involved in which are, as the complainant is informed and believes and therefore avers, similarly on deposit in defendant's name in one or more banks, banking institutions or trust companies in the said District of Columbia, and subject to his individual check, and therefore liable to be dissipated before an accounting can be had between him and the complainant, and a receiver appointed, as hereinafter prayed, and accordingly in such hazard as to be probably beyond reach of the complainant in event of an adjudication in his behalf herein; and further that the said defendant is largely in debt, as is evidenced by the pendency of said large number of suits depending in this court, and by reason of said partnership or trust fund being on deposit as aforesaid to his personal credit, said fund is subject to attachment or garnishment and execution at the suit of his creditors.

10. Complainant further shows that among the judgments of said Court of Claims appropriated for in said act of Congress were those in the following cases, which are included in said partnership agreement, but which are not included in Complainant's Ex.
6 No. 1: J. A. Burgwyn, administrator of Dorsey S. Deloatch, $315; William T. Fauber, $375; and Richard Mayse, $880. A Government warrant has been issued to pay said judgment in favor of said Burgwyn and is now in the hands of the said defendant, but has not been collected by him. The judgments in favor of the said William T. Fauber and the said Richard Mayse have not yet been paid, nor have warrants, as complainant is informed and believes and therefore charges, been issued to pay the same, but complainant is advised and believes and therefore avers that warrants will shortly be issued by the Government to pay said judgments. There are payable on account of fees as aforesaid to defendant and said intestate's estate on account of said judgments from 40 per cent. to one-half of the amount of said judgments, which said fees are distributable in accordance with the terms of the said partnership agreement.

11. Complainant is advises and believes and therefore avers that he has no adequate remedy at law in the premises and he therefore seeks the aid of this honorable court.

The premises considered your complainant therefore prays:—

1. That the writ of subpœna may issue from this court commanding the defendant to appear and answer the exigencies of this bill of complaint.

2. That a temporary restraining order be issued by this court to the said defendant, Gilbert Moyers, restraining and enjoining him during the pendency of this cause, from collecting or receiving any

money or moneys, or cashing any drafts or warrants issued
7 in any cause or causes pending in the Court of Claims of the United States, in which the complainant, as administrator of the estate of the said George B. Edmonds, deceased, is in any wise interested, or to the fees in which the said partnership is entitled, or for, or on account of which, said partnership would be legally liable to any third person or persons; and also restraining said defendant, during the pendency of this cause, from withdrawing, by check or otherwise, any money or moneys which are on deposit in any bank, banking institution or trust company in the District of Columbia, in his, the said defendant's name, or to his, the said defendant's, personal credit, or to his, the said defendant's credit, as trustee, agent, attorney or otherwise.

3. That a proper person may be appointed to receive, collect and get in, during the pendency of this cause, all of the outstanding debts and money and evidences of debt and warrants or drafts, due to or on account of the said partnership business or concern, or due to the complainant as administrator as aforesaid, or for or on account of which said partnership would be legally liable to any third person or persons; and also to take possession of all money, evidences of debt, warrants and drafts, effects and property of or belonging to said partnership or in or to which said partnership is in anywise interested.

4. That the defendant may be ordered to deliver up to such person all of the money, evidences of debt, warrants and drafts, effects and property of or belonging to said partnership, or in which said partnership is in anywise interested, in his possession or
8 power, or for or on account of which said partnership would be legally liable to any third person or persons; and also to pay over to such person a sufficient sum of money to cover all money or moneys collected by him on account of said partnership, or for or on account of which said partnership is legally liable; and also to deliver to such person all books of account, accounts, receipts, vouchers, and papers of or belonging to said partnership; and that the said defendant may be restrained, by the order and injunction of this court, during the pendency of this cause, from demanding, receiving, or obtaining possession of any debts, moneys, evidences of debt, warrants and drafts, or property due or belonging to said partnership, or for or on account of which said partnership is legally liable to any third person or persons; and also from, in any manner, intermeddling with the moneys, books, evidences of debt, warrants and drafts, papers, or accounts of said partnership.

5. That all necessary accounts may be taken by and under the decree and direction of this court of all the said partnership transactions between the complainant's intestate and the defendant, and all transactions of the said defendant on account of said partnership after the death of the said intestate, and that what shall appear thereon to be due from the defendant may be decreed to be paid by him.

And for such other and further relief as to the court may seem proper in the premises.

The defendant to this bill of complaint is Gilbert Moyers, whose address is No. 720 Seventeenth St. northwest, Washington, D. C.

HORACE S. CUMMINGS,
Administrator George B. Edmonds, Deceased, Complainant.

DAVIS & TUCKER,
Solicitors for Complainant.

9 DISTRICT OF COLUMBIA, *ss:*

I do solemnly swear that I have read the foregoing bill of complaint by me subscribed, and know the contents thereof, and that the facts therein stated upon my personal knowledge are true and those stated upon information and belief I believe to be true.

HORACE S. CUMMINGS.

Subscribed and sworn to before me this 16th day of September, A. D. 1899.

J. R. YOUNG, *Clerk,*
By R. J. MEIGS, JR., *Ass't Clerk.*

10 COMPLAINANT'S EXHIBIT No. 1.

No. & date of warrant.	Name of claimant.	Amount of judgment.	When paid.	Amount of fee.
#7643 May 8, '99...	H. T. Cate	$835.00	June 14, '99	$417.50
#8071 May 17, '99..	J. C. Tappan, adm'r .	2105.00	May 24, '99	1052.50
#6863 Ap'l 1, '99...	R. Butler.....	122.00	Ap'l 12, '99	61.00
#9575 June 26, '99..	J. P Davidson.....	1830.00	.....	915.00
#7158 Ap'l 15, '99.	C. Uble, adm'r.....	585.00	May 11, '99	297.50
#8289 June 1, '99...	W. R. Welborn.....	250.00	June 17, '99	125.00
#7018 Ap'l 10, '99 ..	J. Gall.....	704.00	Ap'l 18, '99	352.00
#6967 Ap'l 7, '99 ...	S. Bagnell, adm'r....	995.00	Ap'l 10, '99	497.50
	John Ehs.....	627.00	Aug. 9, '99	313.50
#8036 May 16, '99..	R. M. Johnston.....	2105 00	June 24, '99	1052.50
#7279 Ap'l 20, '99 ..	Anna Hunt, admr....	19,445	Ap'l 21, '99	9,722.25
#8183 May 24, '99..	Mrs. H. E. Ladd.....	985.00	June 21, '99	492.50
#7377 Ap'l 26, '99..	J. Harding, adm'r ...	1950.00	May 27, '99	975.00
#7985	W. Williams, adm'r..	237.00	June 10, '99	113.50
#7580 May 4, '99...	N. K. Thornton.. .:..	670.00	May 29, '99	335.00
#8486 M'ch 17, '99..	S. Fitzhugh, adm'r...	19975.00	March 17, '99	7990 00
#7220 Ap'l 18, '99 ..	J. R. Hornbaker. ...	330.00	Ap'l 27, '99	165.00
		$53,750.00		$24,877.25
11				
	Forward.....	53,750.00	.....	24,877.25
#7294 Ap'l 22, '99 ..	T. W. Russell.....	772.00	May 19, '99	386.00
#6856 Ap'l 1, '99...	M. C. Baylor	1144.00	Ap'l 8, '99	572.00
#6871 Ap'l 1, '99...	J. L. Roberts...	395.00	Ap'l 8, '99	197.50
#7320 Ap'l :4, '99..	Geo. Show.....	695.00	May 1, '99	347.50
		$56,756.00		$26,380.25

12 COMPLAINANT'S EXHIBIT No. 2.

WASHINGTON, D. C., *July* 21, 1899.

DEAR SIR: Owing to prostration from the heat I have not been able to complete the work on those Edmunds cases. I have got it well in hand however, and will have a statement ready by Thursday next, possibly Wednesday.

Yours truly, GILBERT MOYERS.

(On back of postal:)

JOHN W. BUTTERFIELD,
3rd St. N. W., Bet. D. & E. Sts., City.

(2 stamps.)

COMPLAINANT'S EXHIBIT No. 3.

Law office of Gilbert Moyers.

WASHINGTON, D. C., *Aug.* 3, 1899.

John W. Butterfield, Esq., Washington, D. C.

DEAR SIR: I regret to inform you that owing to my health not being the best for the last week or so I have not yet completed that statement in the Edmunds matter, but have made considerable progress and will be through with it this week, I think.

Again I want Mr. Chaney to represent me in this matter and he has not yet returned. Received a telegram from him indicating he would be here the first of next week then he can go over the matter with you and reach at some conclusion.

Yours truly, GILBERT MOYERS.

13 COMPLAINANT'S EXHIBIT No. 4.

1320 F. ST. N. W., *Sept.* 11, 1899.

Mr. John W. Butterfield, 419 4th St. N. W.

DEAR SIR: I saw Col. Moyers this afternoon about the matter you were here to see me about this morning.

I have no doubt that the matters can be satisfactorily adjusted, and amicably done, but he says that he is absolutely unable to gather together his data this week, on (rest of letter torn off).

14 *Answer.*

Filed September 20, 1899.

In the Supreme Court of the District of Columbia, Holding an Equity Court for said District.

HORACE S. CUMMINGS, Administrator of the Estate of George B. Edmonds, Complainant,
vs.
GILBERT MOYERS, Defendant.
} Equity. No. 20802.

To the justice holding said equity court the defendant, Gilbert Moyers, in answer to the bill of complaint herein respectfully shows:

1. This defendant admits the averments of the first, second and third paragraphs of said bill.

2. For answer to the fourth paragraph of said bill the defendant admits that on the sixth day of February, 1888, he and the said George B. Edmonds, deceased, entered into an agreement in writing of the general character of the paper which is set out in the said fourth paragraph, but whether the said copy is a true copy of said original agreement this defendant does not know, and he calls for proof thereof;

3. For answer to the fifth paragraph this defendant denies that the cases named in the schedule attached to said agreement were those set forth in the schedule or list attached to this bill of complaint and marked Exhibit No. 1, and says that upon the best of his recollection and belief the only cases named in said Exhibit No. 1, which were among the cases specified in this schedule attached to said agreement of February 1888, were the cases in which
15 J. C. Tappan, administrator and S. Fitzhugh, administrator, were claimants respectively, and in the other cases set forth in the said Exhibit No. 1, said George B. Edmonds never had any interest whatever, and the same were not included in the schedule referred to in the said agreement of February 1888.

4. For answer to the sixth paragraph, this defendant, while denying that the said Exhibit No. 1 sets out the true list of the cases covered by the said agreement, admits that the said claims were prosecuted by him, that judgments were rendered therein by the Court of Claims and that the Congress of the United States appropriated for the payment of the same. He further admits that he has collected said judgments, but he denies that from the same there was due any sum whatever to the complainant administrator, or that any part of the said sum of twenty-six thousand three hundred and eighty dollars and twenty-five cents ($26,380.25) was payable to the representative of the said George B. Edmonds under the terms of

said agreement, for that, he says that in the year 1892 and prior thereto after the making of said agreement, the said George B. Edmonds being in need from time to time of money, obtained from this defendant on account of the prospective fees to be earned under said agreement, various considerable sums of money, amounting in all to the sum of about fifteen hundred dollars ($1500.00) and that thereafter, to-wit, in the year 1892, this defendant paid to the said George B. Edmonds, and the latter received, the further sum of five hundred dollars, (500.00) in full settlement of all claims and demands which he had, or might thereafter have, under the said agreement of February 1888, and the said
16 George B. Edmonds then and there, at the time of the receiving of said money agreed to return to this defendant the agreement of February 1888 to his hands endorsed in such manner as to show that full settlement had been made with him of all his claims thereunder, and this defendant says further that from this time forward until his death which occurred, towit: on the — day of —— the said George B. Edmonds never pretended or asserted to the knowledge of this defendant any claim whatever upon him for the right or interest in the said various cases embraced within the schedule attached to said agreement of February 1888, and defendant further says that at the time of the payment of said sum of five hundred dollars ($500.00) in 1892 as aforesaid, it was well known to both the said George B. Edmonds and to this defendant that a long time must elapse before the said claims, could be allowed and paid, and the value of said claims and the fees to arise therefrom was estimated by both of them to be much less than was afterwards realized.

5. For answer to the seventh paragraph this defendant denies for the reasons above stated that there was any duty whatever upon him to account to this complainant under the partnership agreement aforesaid.

6. For answer to the eighth paragraph the defendant denies that the fees he received from the said cases specified in Exhibit No. 1 to the bill of complaint herein were partnership funds or trust funds, and he avers that there is no money in which the estate of George B. Edmonds, or the said complainant, as representing the same, had any interest whatever, wherefore he says that his deposit of the same in his own bank account is not subject to criti-
17 cism, and he denies that he is under any liability whatever to the complainant in the premises.

7. For answer to the ninth paragraph the defendant says that the statements therein contained to the effect that he is insolvent is a malicious and wilful falsehood and wholly without justification, for that, he says that, as he believes to be well known to the said complainant, he is the owner of real estate in the District of Columbia, and in the near by territory of Maryland of the value of about sixty eight thousand dollars ($68,000.00) at the least; that one of his estates is a tract of land of one hundred acres in Prince George

county Maryland, known as the "Carlton Mill" property, which is of the value, as this defendant estimates it, of not less than thirty-five thousand dollars ($35,000), and the same is wholly unincumqered; that near by the said property is another tract of thirty acres, known as the "Shreeve" property, of the value of about fifteen thousand dollars ($15,000.) that is subject only to six thousand dollars ($6,000) of indebtedness; that he also owns his residence situated at the corner of Eleventh and East Capitol streets, northeast, in the city of Washington, which is worth about eight thousand dollars ($8,000) and is clear of all incumbrance; and he also owns property in the subdivision of Trinidad in the District of Columbia worth about ten thousand dollars ($10,000), and he is also possessed of personal estate, other than his said bank account for the said fees derived from the cases aforesaid, of the value of not less than ten thousand dollars ($10,000) and an execution against this defendant for any amount within the said values, or a decree for said sum would in the estimation of this defendant be at any time realized. And
18 for answer to so much of said paragraph as avers that the only cases pending in this court against him of which he has knowledge are on the law side of the court; one of which is for the recovery of five hundred dollars ($500) to which this defendant has, he believes, a complete defence, and the others are some causes appealed by him from the judgment of the justice of the peace, and in which the total amount involved does not exceed five hundred dollars ($500). This defendant denies that he is largely indebted as in said paragraph is averred, and denies that there is any probability whatever of his funds in the bank being attached, or taken on execution, for that, he is amply able to pay all that he owes on any judgments that may be rendered against him.

8. For answer to the tenth paragraph defendant says that the said cases of J. A. Burgwyn, administrator, and William T. Fauber, and Richard Mayse were not included in the said partnership agreement, and that the said George B. Edmonds never had any interest whatever in said cases. And the defendant further says that the said claim of Richard Mayse was, as he is informed and believes, prosecuted to a judgment by R. A. Howard, an attorney practicing in the Court of Claims, and the money appropriated therefor has been by him collected and this defendant never had any interest in the said claim as attorney, or otherwise.

9. For answer to the eleventh paragraph the defendant denies that the said complainant, if he has any cause of action whatever against him, is without remedy at law, and submits that if, as he avers in his said bill of complaint, he has knowledge of the
19–22 exact amount of fees which he claims to be due him under said agreement of February 1888, that he has failed to take his remedy at law and ought to be required to pursue the same, but

this defendant again denies that the said complainant has any right whatever to have from him any sum by reason of the premises.

Now having fully answered this defendant prays that he may be hence dismissed with his costs in this behalf most wrongfully incurred.

GILBERT MOYERS, *Defendant.*

BIRNEY & WOODARD,
Counsel for the Defendant.

DISTRICT OF COLUMBIA, *ss:*

I, Gilbert Moyers, on oath say that I have read the foregoing answer by me subscribed and know the contents thereof, and that the statements therein made upon my personal knowledge are true, and those made upon information and belief, I believe to be true.

GILBERT MOYERS.

Sworn to and subscribed before me this 20th day of September, A. D. 1899.

J. R. YOUNG, *Clerk, &c.,*
By R. J. MEIGS, JR., *Ass't Clerk.*

* * * * * * *

23 *Memorandum.*

September 26, 1899.—Joinder of issue on answer filed.

Order on Secretary for Certain Information.

Filed March 7, 1900.

In the Supreme Court of the District of Columbia, Holding an Equity Court for said District.

HORACE CUMMINGS, Administrator of George B. Edmonds, Deceased, Complainant,
vs.
GILBERT MOYERS, Defendant.
} Equity. No. 20802.

Order.

Upon consideration of the motion of the complainant in the above-entitled cause this day filed, for an order requesting the Secretary of the Treasury of the United States to furnish certain information to be used in said cause, it is by the court this 7th day of March, A. D. 1900, ordered that the Secretary of the Treasury of the United States be, and he is hereby requested to furnish for use in the trial

of said cause, transcripts of the records of the Treasury Department of the United States, giving the following information, namely:

The number, date and amount of the warrant, and the number, date and amount of the draft issued in favor of Susan Merrill of Lee county, Mississippi, in payment and satisfaction of an appropriation for the payment of claim of the said Merrill, which said ap-
24 propriation was made by the act of Congress of March 3, 1891, being an act for the allowance of certain claims, for stores and supplies, etc., as reported by the Court of Claims under the provisions of the act of March 3, 1883, known as the "Bowman act;" also the name or names of the attorney or attorneys, if any, who receipted for the above mentioned draft, and if said draft was delivered in the care of any attorney or attorneys, the name or names of said attorney or attorneys and the date of such delivery.

JOB BARNARD, *Justice.*

Motion to Obtain Information.

Filed March 7, 1900.

In the Supreme Court of the District of Columbia, Holding an Equity Court for said District.

HORACE CUMMINGS, Administrator of George B. Edmonds, Deceased, Complainant,
vs.
GILBERT MOYERS, Defendant.
} In Equity. No. 20802.

Comes now Horace Cummings, the complainant in the above entitled cause, and moves the court for an order requesting the Secretary of the Treasury of the United States to furnish to this court properly certified transcripts of the records of the Treasury Department of the United States, giving the following information to be used as testimony on behalf of the said complainant in said cause, to-wit:

25 The number, date and amount of the warrant, and the number, date and amount of the draft issued in favor of Susan Merrill of Lee county, Mississippi, in payment and satisfaction of an appropriation made by the act of Congress of March 3, 1891, being an act for the allowance of certain claims for stores and supplies, &c., as reported by the Court of Claims under the provisions of the act of March 3, 1883, known as the "Bowman act;" also the name or names of the attorney or attorneys, if any, who receipted for the above mentioned draft, and if said draft was delivered in the care of any such attorney or attorneys, the name or names of such attorneys, and the date of such delivery.

DAVIS AND TUCKER,
Solicitors for Complainant.

Copy of Original Papers in U. S. Treasury.

Filed March 15, 1900.

UNITED STATES OF AMERICA,
TREASURY DEPARTMENT, *March* 14, 1900.

Pursuant to section 882 of the Revised Statutes, I hereby certify that the annexed are true and correct copies of the originals except the initials of the clerks who made them out. (It appears from the warrant that the draft was mailed to Susan Merrell Tupelo, Miss., in this department.

In witness whereof, I have hereunto set my hand, and caused the seal of the Treasury Department to be affixed, on the day and year first above written.

[SEAL.]

L. J. GAGE,
Secretary of the Treasury.

L. J.
T.

26 *Draft.*

No. 40,128. On war warrant. No. 2182.
Series of 1874.

H–L–K. TREASURY OF THE UNITED STATES,
WASHINGTON, D. C., *Jan'y* 5″, 1892.

Pay to the order of Susan Merrill, eight hundred fifteen dolls.
To ass't treasurer of New Orleans, La.
($815.)

E. H. NEBUKER,
Treasurer of the United States.

[Written across the face:] United States Treasury. Paid January 15, 1892. New Orleans.

(Endorsed:) John H. Long, executor of Susan Merrill. Pay Continental national bank Memphis, Tenn. or order, for collection, for account of First national bank, Tupelo, Miss. A. T. Harkey, president. A. T. Harkey, P't. For collection, account of Continental nat'l bank, Memphis, Tenn. C. F. M. Niles, cashier. A. Labarthe, *of* cash'r.

27 Office of the Secretary of the Treasury, division of warrants, estimates, and appropriations. Form 58.

War Settlement Warrant.

TREASURY DEPARTMENT.

To the Treasurer of the United States, Greeting:

No. 2182. Pay to Susan Merrill, Tupelo, Miss., or order, to be charged to the appropriations named in the margin, eight hundred and fifteen dollars due —— —, —, on settlement, pursuant to a requisition No. 2671, of the Secretary of War, dated Jan. 2, 1892, countersigned by the Second Comptroller of the Treasury and registered by the 3 auditor.

$815.00 And for so doing this shall be your warrant.

[SEAL.] Given under my hand and the seal of the Treasury Department this 2 day of January, in the year of our Lord one thousand eight hundred and ninety two, and of Independence the one hundred and sixteenth.

O. L. SPAULDING,
Acting Secretary.

Countersigned: 4″

A. C. MATTHEWS,
First Comptroller,
By J. R. GARRISON,
Deputy First Comptroller.

Registered: 5″

L. W. RIED,
Ass't Register.

OFFICE OF THE TREASURER OF THE UNITED STATES.

Received for this warrant the following draft:
No. 40128 on New Orleans.
No. — on ——.
Mailed 1/6/92.

Appropriations.

Stores & supplies taken by the army, Bowman Act cases..... 815.00
Regular supplies of the quartermaster's department.....
Incidental expenses of the quartermaster's department.....
Transportation of the army and its supplies.....
Horses and other property lost in the military service.....
Subsistence of the army.....
Medical and hospital department.....
Claims for quartermaster's stores and commissary supplies, act July 4, 1864.....
Fifty per centum of arrears of army transportation due certain land-grant railroads.....
Commutation of rations to prisoners of war in rebel States and soldiers on furlough.....

28 *Motion for Leave to Amend Answer and Affidavit.*

Filed May 18, 1900.

In the Supreme Court of the District of Columbia, Holding a Special Term in Equity.

HORACE S. CUMMINGS
vs.
GILBERT MOYERS. } Equity. No. 20802.

Now comes the defendant Gilbert Moyers and moves the court for leave to amend the 4th paragraph of his answer so far as the same admits or appears to admit that all the cases mentioned in Complainant's Exhibit No. 1 were prosecuted by this defendant in the Court of Claims and that he has collected the judgments had in all said cases, for that he says such admission does not truly show the facts and was improvidently made through mistake as will more fully appear from the affidavit hereunder written.

BIRNEY & WOODARD,
Solicitors for Defendant.

DISTRICT OF COLUMBIA, *ss:*

I, Gilbert Moyers, on oath say that I am the defendant in the above cause of Cummings, administrator of Edmonds *vs.* Gilbert Moyers. The statement in the fourth paragraph of my answer filed September 20, 1899 to the effect that I had as attorney prosecuted all the cases mentioned in the Exhibit 1 to the bill of complaint, and collected the judgments in all such cases, is erroneous and was made in mistake of the facts. Of the cases mentioned in said Exhibit No. 1 there are four which I did not prosecute and the judgments in which were not collected by me, as
29 appears by the original files and records of the Court of Claims which have been produced in this cause. The cases are those of George Show, J. L. Roberts, T. W. Russell and Christian Ubele, admr. in which the recoveries amount to $2697. The first two of these were prosecuted by G. W. Z. Black, as attorney, the case of Russell by P. E. Dye as attorney and the case of Ubele by W. Penn Clark and his associate as attorneys. The appropriations for payment of the amounts found due were presumably collected by them. They were not collected by me. The bill of complaint in this cause was filed September 16, 1899. At the time of its filing, a most sweeping injunction was allowed, restraining me among other things from withdrawing any moneys on deposit in my name or to my credit in any bank in the District of Columbia. By this means all of my available funds were tied up and I was much

embarrassed. To get rid of this injunction as speedily as might be was my first effort and to this end my answer was hastily prepared. I have been engaged in the work of an attorney prosecuting claims before the Court of Claims for many years and had many hundreds of cases before the Government departments and the Court of Claims. I knew I had settled all of my affairs with the complainant's intestate in 1892, and that he had no claim upon me in respect of any cases. For this reason I did not scan Exhibit No. 1 and examine the cases named therein with care, and I now find that I made the error above stated. This erroneous admission in my answer did not come to my attention until yesterday, May 15, 1900.

GILBERT MOYERS.

Subscribed and sworn to before me this 16th day of May, 1900.

[SEAL.] HERBERT L. FRANC,
Notary Public, D. C.,
Mertz Bldg., Cor. 11th. & F Sts., Washington, D. C.

30 *Order Overruling Defendant's Motion to Amend.*

Filed May 18, 1900.

In the Supreme Court of the District of Columbia.

HORACE S. CUMMINGS, Adm'r, Complainant,
vs.
GILBERT MOYERS, Defendant.
} Equity. No. 20802.

Upon consideration of the motion of the defendant this day filed for leave to amend his answer to the bill of complaint, it is this 18th day of May, 1900, order- that said motion be and the same is hereby overruled.

A. B. HAGNER,
Asso. Justice.

Motion for Leave to Amend Answer, and Affidavit.

Filed May 23, 1900.

In the Supreme Court of the District of Columbia.

HORACE S. CUMMINGS, Administrator,
vs.
GILBERT MOYERS.
} No. 20802. Equity.

Now comes the defendant, Gilbert Moyers, by his counsel, and shows to the court that in answer to the sixth paragraph of the bill

of complaint this defendant by the fourth paragraph of his answer in general terms admitted in substance that judgments had
31 been rendered by the Court of Claims in all the cases of claims mentioned in Exhibit No. 1, to the bill of complaint, and admitted that he, the defendant, had collected said judgments.

This defendant now finds that he was mistaken in such admissions, that the same were too broadly made, that the testimony in this case discloses such mistake and that of the twenty cases mentioned in said Exhibit No. 1, there are five which were not prosecuted in the Court of Claims by this defendant, and in which he did not collect the judgment or receive the amount appropriated by the Congress of the United States, and there is one other in which no judgment whatever has been rendered by the Court of Claims and in which no appropriation has been made by Congress.

Wherefore, the premises considered because of the said apparent and manifest mistake of this defendant, he prays leave of the court to amend his said answer in such wise as to show the facts, as above set forth.

BIRNEY & WOODARD,
Counsel for Defendant.

DISTRICT OF COLUMBIA, *ss:*

I, Gilbert Moyers on oath say that I am the defendant in the foregoing suit, that at the time of making my original answer to the bill of complaint I was under a mistake and misapprehension touching the cases mentioned in Exhibit No. 1 to complainant's bill, and supposed that his statement that I had prosecuted said cases and collected the appropriations to pay the same was true, as will appear by my affidavit heretofore made to amend my answer.
32 Such answer was made in haste, such haste being of great importance to me because of the order of injunction which had been granted, restraining me from checking out of any bank any money to my credit; and I did not therefore give the said Exhibit No. 1 the careful examination which it should have had. It is a fact, which has been established by the sworn testimony taken in this cause and by the examination in the courts of said testimony of the original files and records of the Court of Claims that neither I nor George B. Edmonds prosecuted the cases of C. Ubule (or Ubele) administrator, T. W. Russell, M. C. Baylor, J. L. Roberts and George Show, but said cases were all prosecuted by other attorneys, who received the amount of the appropriation by Congress for the payment of the same and all the fees paid therein. It has also been shown in the evidence by the official records of the Court of Claims, and it is a fact that the case of Johnston, administrator of Richard W. Johnston (erroneously styled R. M. Johnston in Exhibit No. 1) has not been prosecuted to a finding by the Court of Claims, and that no appropriation has been made for the payment thereof.

The affiant further shows that he is employed in many hundreds of cases in the Court of Claims and the various Government departments, to examine which would take much time, and that his failure to examine Exhibit No. 1 and compare the same with his records is largely due to this fact, and to the further fact that he supposed he had made a complete settlement with the said George B. Edmonds in 1892, and that said Exhibit No. 1, would play but little part in the trial of this cause. Affiant further says that the facts above set forth, connected with the said six cases, have
33 come to his knowledge only within the past few days, that is to say, within the last week.

The affiant further says nothing.

GILBERT MOYERS.

Sworn to before me this 22nd day of May, 1900.

HERBERT L. FRANC,
[SEAL.] *Notary Public, D. C.*

Order Granting Leave to File Supplemental Answer.

Filed May 24, 1900.

In the Supreme Court of the District of Columbia.

HORACE S. CUMMINGS, Adm'r.
vs.
GILBERT MOYERS. } No. 20802.

Upon consideration of the motion and petition of the defendants for leave to amend his answer to the original bill of complaint, it is this 24th day of May, 1900, ordered that said motion be and the same is allowed so that defendant have leave to file a supplemental answer to the effect stated in said petition.

By the court:

A. B. HAGNER.

34 *Supplemental Answer.*

Filed May 26, 1900.

In the Supreme Court of the District of Columbia.

HORACE S. CUMMINGS, Administrator,
vs.
GILBERT MOYERS. } Equity. No. 20802.

Now comes the defendant Gilbert Moyers and by leave of the court first had and obtained, files this his supplemental answer to the bill of complainant herein:

This defendant says that since the filing of his answer herein to the original bill of complaint, he has learned and the fact is that there are errors of statement contained in his said answer in the 5th and 6th paragraphs thereof, wherefore, to correct said errors, this defendant further answering the same says:

For further answer to the said 5th paragraph this defendant says that the cases referred to in said agreement of February 1888, were never scheduled or set out in any list so far as this defendant has knowledge; that it was intended when said agreement was signed that a list of such cases should be prepared by the said George B. Edmonds and a copy thereof attached to each draft of the said agreement of February 1888, which was executed in duplicate, but the same was not done.

And further answering, this defendant says that so much of his said answer in paragraph four as appears to admit that all the claims set out in Complainant's Exhibit No. 1 were prosecuted by this defendant and that judgments were rendered in all of them by the Court of Claims and that the Congress of the United States
35 has appropriated for the payment of all of them and that he, this defendant, has collected all of said judgments and has collected the sum of $26,380.25 in fees is erroneous, and defendant says that the fact is that of the cases so set out in the said Exhibit No. 1, only a part were prosecuted by him, and that of said cases so found in said Exhibit No. 1, the case of C. Uble (or Ubele), administrator, T. W. Russell, M. C. Baylor, J. L. Roberts and George Show were not prosecuted by this defendant and he has never had any interest therein as attorney or otherwise, said cases having been prosecuted by other attorneys with whom this defendant had no connection, and who, as he verily believes, collected the appropriation made therefor and received any fees that may have been paid by the claimants, and the further cause of R. M. Johnston mentioned in said Exhibit No. 1 was not prosecuted by this defendant and he has no knowledge thereof and he does not know if there is such a case or if the same has ever been appropriated for by Congress; that if by said case of "R. M. Johnston" is meant the case of the administrator of Richard W. Johnston then this defendant says that he verily believes no finding upon the merits has been made by the Court of Claims in that case, and no appropriation has been made by Congress therefor.

This defendant further correcting the said 4th paragraph again says that there was no schedule attached to the said agreement of February 1888 and the intimation contained in said fourth paragraph that there was such schedule attached to said agreement is erroneous.

This defendant prays that the above answer may be taken as a supplement to and amendatory of his said original answer in this cause.

GILBERT MOYERS.

BIRNEY & WOODARD,
Counsel for Def't.

36 DISTRICT OF COLUMBIA, *ss*:

I, Gilbert Moyers, on oath say that I have read the foregoing answer by me subscribed and know the contents thereof and that the statements therein made of my own knowledge are true, and those stated on information and belief, I believe to be true.

GILBERT MOYERS.

Subscribed and sworn to before me this 25th day of May, 1900.

GEORGE W. TAYLOR,
[SEAL.] *Notary Public, D. C.*

Motion to Strike Out Part of Def't's Amended Answer.

Filed June 1, 1900.

In the Supreme Court of the District of Columbia, Holding an Equity Court for said District.

HORACE S. CUMMINGS, Administrator, Complainant,
vs.
GILBERT MOYERS, Defendant.
} In Equity. No. 20802.

Comes now the complainant, in the above-entitled cause and moves the court to strike out and expunge from the amended or supplemental answer of the defendant, filed May 26th, 1900, or for an order requiring the said defendant to strike out or expunge from his said amended or supplemental answer so much of said amended or supplemental answer as corrects or amends the statement in the fourth paragraph of his original answer that there was a schedule attached to the partnership agreement of February 6th, 1888,
37 mentioned in the bill of complaint, by stating that there was no such schedule; upon the ground that the order of the court passed May 24th 1900, granting leave to the defendant to amend his answer, or file a supplemental answer, did not grant leave to the defendant to correct or amend said answer in the respect heretofore mentioned.

DAVIS & TUCKER,
Solicitors for Complainant.

Messrs. Birney & Woodard, solicitors for said defendant:

Take notice that the above motion will be called up for hearing in equity court No. 1, Mr. Justice Hagner presiding, on Tuesday morning next, June 5th, 1900 at 10 o'clock, or as soon thereafter as counsel can be heard.

DAVIS & TUCKER,
Solicitors for Complainant.

Service accepted.
BIRNEY & WOODARD,
Solicitors for Defendant.
June 1st. 1900.

38-46 *Order Striking Out Portions of Supplemental Answer.*

Filed June 5, 1900.

In the Supreme Court of the District of Columbia.

HORACE S. CUMMINGS, Adm'r,
vs.
GILBERT MOYERS, Defendant. } In Equity. No. 20802.

Upon consideration of the motion of the complainant in the above entitled cause filed June 1, 1900, and after argument by the solicitor for the respective parties, it is this 5th day of June, 1900, ordered that so much of the defendant's amended or supplemental answer heretofore filed as denies that there was a schedule attached to the partnership agreement, described in said bill of complaint be and the same is hereby expunged and stricken from said amended or supplemental answer.

A. B. HAGNER,
Asso. Justice.

Joinder of Issue.

Filed June 5, 1900.

In the Supreme Court of the District of Columbia.

HORACE S. CUMMINGS, Adm'r,
vs.
GILBERT MOYERS, Defendant. } In Equity. No. 20802.

The complainant joins issue upon the amended or supplemental answer of the defendant.

DAVIS & TUCKER,
Solicitors for Complainant.

* * * * * * *

47 *Decree for Accounting, &c.*

Filed June 13, 1900.

In the Supreme Court of the District of Columbia, Holding an Equity Court for said District.

HORACE S. CUMMINGS, Administrator of the Estate of George B. Edmonds, Deceased, Complainant,
vs.
GILBERT MOYERS, Defendant.
} Equity. No. 20802.

This cause coming on to be heard upon the pleadings, exhibits and testimony, and having been argued by counsel and submitted to the court, it is this 13th day of June, A. D., 1900, adjudged, ordered and decreed as follows, to wit:

1. That a special partnership existed between the complainant's intestate, George B. Edmonds, and the defendant, Gilbert Moyers, created by the partnership agreement described in the fourth paragraph of the bill of complaint in the above-entitled cause, and that said partnership related to the prosecution of the claims mentioned and described in a schedule or list of claims, which were therein referred to as attached to the said partnership agreement.

2. That no valid and binding purchase was made by said defendant of the interest of the said decedent, George B. Edmonds, in said partnership business as is alleged in said defendant's original answer to said bill of complaint.

3. That the complainant, as the administrator of the said decedent, George B. Edmonds, is entitled to an accounting with the defendant of all partnership dealings and transactions be-
48 tween the defendant and said decedent after the date of the said partnership agreement of February 6, 1888, and to recover from the said defendant the balance of money shown to be due from said defendant upon such accounting.

4. That this cause be and the same is hereby referred to the auditor of this court to take an account of said partership dealings and transactions commencing with the 6th day of February 1888, showing the sum or sums of money collected by the said defendant, and by the said George B. Edmonds (if any were so collected by him) from time to time on account of said partnership agreement; and to ascertain the sum or sums of money so collected by said defendant, and by the said George B. Edmonds, if any, on account of the fees paid by the claimants in the said partnership claims; the amount of the fees which were properly payable by said claimants, and the amount of fees which were actually paid by them, and the person or persons to whom they were so paid; the sum or sums of

money, if any, paid out by the said defendant for expenses in the prosecution of said claims; the sum or sums of money, if any, paid by the said defendant to the said decedent during the lifetime of said decedent on account of the interest of said decedent in said partnership business; and to report fully the state of the partnership account between the said decedent, or his estate, and the said defendant; the said account and report to be taken and made upon the testimony now in the said cause, with such other and further testimony as may be adduced by the parties thereto, which the auditor is hereby authorized to take, upon proper notice to said parties.

49–54 5. And it is further ordered that the consideration of the application for a receiver presented by the bill, be and the same is reserved for the future adjudication of the court to be made on a motion for that purpose by the complainant upon notice thereof to the defendant.

A. B. HAGNER,
Asso. Justice.

* * * * * * *

55 *Order Appointing Receivers; Appeal.*

Filed June 20, 1900.

In the Supreme Court of the District of Columbia.

HORACE S. CUMMINGS, Administrator, &c., Complainant,
vs.
GILBERT MOYERS, Defendant.
} Equity. No. 20802.

Upon consideration of the motion of the complainant in the above entitled cause filed June 12, 1900, for the appointment of a receiver and of the affidavits filed in support thereof as well as the affidavits of the defendant filed in opposition thereto, and also of the pleadings and exhibits and the testimony heretofore taken in said cause, and after argument by the solicitors for the respective parties, it is by the court this 20th day of June 1900, ordered, that Charles Cowles Tucker and Henry F. Woodard, be and they are hereby appointed receivers to collect, get in and receive the hereinafter mentioned property and moneys belonging to the partnership heretofore decreed by this court to have existed between George B. *Edwards*, deceased, and the defendant in said cause; and said receivers are hereby directed to qualify as such, forthwith, by giving a joint bond in the penal sum of fifteen thousand dollars, conditioned upon the faithful discharge of their duties as such receivers.

And it is by the court further ordered that the complainant and the defendant deliver to said receivers all of the books and papers

and other effects of said partnership in their or either of their hands; and that the defendant deliver to said receivers from the moneys heretofore collected by him on account of the fees paid by
56–63 the claimants in the partnership claims described in the bill of complaint in said cause, the sum of nine thousand dollars, which said sum of money said receivers shall hold until further order of the court.

And said receivers are hereby ordered and directed to make a full report to the court after the receipt by them of the books, papers and effects of said partnership, as to the advisability of the further prosecution by them of the uncollected partnership claims and of the state of said partnership business.

A. B. HAGNER,
Asso. Justice.

From the above order the defendant Gilbert Moyers in open court appeals to the Court of Appeals of the District of Columbia and the court fixes the penalty of the bond for supersedeas to be given by him on such appeal at fifteen thousand dollars.

A. B. HAGNER.

June 20, 1900.

* * * * * * *

64 *Testimony on Behalf of Complainant.*

Filed February 12, 1900.

In the Supreme Court of the District of Columbia.

HORACE S. CUMMINGS, Administrator of the Estate of George B. Edmonds, Complainant,
vs.
GILBERT MOYERS, Defendant.
} Equity. No. 20802.

DISTRICT OF COLUMBIA, *ss:*

Be it remembered that an examination of witnesses begun and held on the 13th day of December, A. D. 1899, and continued from time to time until the 18th day of December 1899, when the within depositions were taken, I, Alexander H. Galt, an examiner in chancery, did cause to be personally present at the office of Messrs. Davis and Tucker, Washington Loan and Trust building, Washington, District of Columbia, Horace S. Cummings (the complainant), James W. Butterfield, James B. Edmonds, to testify on the part and behalf of the complainant in a certain cause now pending in the supreme court of the District of Columbia wherein Horace S. Cummings administrator, is complainant and Gilbert Moyers is defendant.

Which said examination was had after due notice and at which, on the day aforesaid, there were present Charles Cowles Tucker

Esquire, on behalf of the complainant and Arthur A. Birney Esquire on behalf of the defendant.

ALEXANDER H. GALT,
Examiner-in-Chancery.

65 In the Supreme Court of the District of Columbia.

HORACE S. CUMMINGS, Administrator of the Estate of George B. Edmonds, Complainant,
vs.
GILBERT MOYERS, Defendant.
} Equity. No. 20802.

WASHINGTON, D. C., *December* 13, 1899.

Met at the office of Messrs. Davis and Tucker, Washington Loan and Trust building, at 3 p. m., this day for the purpose of taking testimony on behalf of the complainant in the above entitled cause.

Appearances: On behalf of the complainant, Charles Cowles Tucker, Esq., on behalf of the defendant, Arthur A. Birney, Esq.

HORACE S. CUMMINGS, the complainant, produced in his own behalf, having been first duly sworn, testified as follows:

By Mr. TUCKER:

Q. Please state your residence and occupation? A. I reside in the city of Washington; occupation a lawyer by profession.

Q. You have been a resident of this District for a number of years? A. Yes sir; for thirty-five years.

Q. And you are the complainant in the suit of Cummings, administrator *vs.* Moyers, known as Equity No. 20,802? A. I am.

Q. You bring the suit as the administrator of the estate of
66 the late George B. Edmonds? A. Yes sir.

Q. Please state whether you were acquainted with Mr. Edmonds in his lifetime? A. I have been acquainted with Mr. Edmonds since about 1882 or '3.

Q. Where did he live? A. He came from Iowa. Secretary Kirkwood of the Interior appointed him when he was a resident of Iowa, as chief clerk of the Land Office.

Mr. BIRNEY: This is objected to as immaterial and irrelevant.

The WITNESS: He was in that office for a while and then his health being such that he needed outdoor life, he resigned that office and was appointed as Government inspector to examine into Government lands, especially in regard to timber depredations in the South. He held that office, I should say, until some time in 1884 or 1885 when he resigned and went into what is commonly known as the claims business.

Q. Do you know whether he was a lawyer by profession? A. He

was a lawyer and a man who had a very good reputation from what I have heard of him.

Q. When and where did he die? A. He died at Dunn Loring, in Fairfax county, Virginia, I think the last day of October, 1896.

Q. How intimate was your acquaintance with him for a few years prior to his death? A. In 1890 or 1891 particularly, he showed aberration of mind and it became a question of——

67 Q. Please just answer the question. How intimate was your acquaintance with him—intimate or otherwise? A. It was rather intimate than otherwise.

Q. State whether or not you, as his administrator, have possession of any of his property or effects? A. I have possession of all that I know of.

Q. Generally speaking they consist of what? A. They consist of papers, letters and books, probably 200 and odd books of various kinds and the papers connected with his claim business.

Q. Where did you get possession of those papers and books? A. They were in two trunks in the room that he had occupied—I hired it for him—in 1894.

Q. That room was in a building in this city? A. Yes sir; on F street—the north side of the street between 6th and 7th.

Q. After his death did you find his effects in that room? A. Yes; and took possession of them. They were kept locked up in the room.

Q. Do you know whether anybody beside yourself had access to the room? A. I presume they did but I do not know.

Q. You had a key to it? A. I had the key to the trunk.

Q. I hand you a paper dated February 6, 1888, purporting to be an agreement between Gilbert Moyers and George B. Edmonds, to which is attached a number of sheets containing a list of names, and ask you if you have ever seen that paper before?

68 Mr. BIRNEY: If it is proposed by this question to inquire of the witness whether he saw this paper before the death of Mr. Edmonds, counsel for the defendant objects on the ground that this witness is incompetent to testify to any transactions by or with the deceased.

Mr. TUCKER: Solicitor for the complainant states that it is not the intention to examine this witness with reference to any conversations or transactions he may have had with the deceased.

(By Mr. TUCKER:)

Q. This paper was delivered to you when? A. This paper was delivered to me about 1892 by Mr. Edmonds.

Mr. BIRNEY: I object to that as incompetent.

Q. Please in your answers to these questions do not relate any conversations or transactions you may have had with Mr. Edmonds. Simply state from whom you got the paper and when? A. That

was what I was going to state. This paper was delivered to me by Mr. Edmonds in 1892.

Mr. BIRNEY: Object- to as incompetent by this witness.

WITNESS: And placed by me in my safe where it has been until it was delivered to me by my attorney.

Q. Please state whether or not that bunch of papers is or is not in exactly the same condition as it was when first delivered to you? A. Precisely in the same condition.

Mr. BIRNEY: I object to that as leading and incompetent by this witness.

69 Q. State whether or not that has ever been out of your possession since it was delivered to you until it was delivered to your attorney?

Mr. BIRNEY: Objected to as leading.

A. Never.

Q. Did you ever see Mr. George B. Edmonds write? A. I have, frequently.

Q. Are you familiar with his handwriting? A. I am.

Mr. BIRNEY: Objected to on the ground that it calls for testimony as to transactions with the deceased, as to which this witness is incompetent.

Q. Please state whether or not in your opinion, the name of George B. Edmonds attached to the agreement which you hold in your hand is or is not the genuine signature of George B. Edmonds?

Mr. BIRNEY: Objected to because no proper foundation has been laid and the witness is incompetent to testify to any transactions with the deceased, and his answer must, if made in the affirmative be based upon such transactions.

A. The signature here written by Mr. Edmunds was written by himself.

Q. Please examine the list of names attached to that agreement and state in whose handwriting that is?

Mr. BIRNEY: That is objected to on the grounds heretofore stated.

A. (Examining.) This whole list I have examined it carefully at different times, was made by Mr. Edmonds in his own handwriting.

70 Mr. TUCKER: Complainant's solicitor here requests the examiner to mark for identification the paper referred to.

(The paper is marked Complainant's Exhibit No. 1.)

Q. I hand you 24 envelopes, each containing certain endorsements and enclosures, and ask you if you have ever seen those papers before? A. I have.

Q. Where did you first see them?

Mr. BIRNEY: If it is intended by this question to refer to any time anterior to the death of Mr. Edmonds, the defendant objects on the ground that the witness is incompetent.

A. These papers I never saw or came in possession of until after the death of Mr. Edmonds when, upon examining his effects, I found a set of books supposedly containing all of his claims transactions and also a large mass of these envelopes put up each in a jacket, like that, all in his own handwriting and endorsements. I opened them and found——

Q. Do not state the contents. A. I opened them and found in each one was the envelope that had been sent to him.

Mr. BIRNEY: Objected to as stating the contents of paper writings.

A. I want to say that that is just the way I found them; in every case without exception there was the letter as you see it there with his endorsement; I compared them with his books and found the books and the contents spoke for themselves. I will say that there were about 350 of those.

71 Q. Those envelopes I have just handed to you are the papers in what if any claims? A. These papers cover the cases that are specified in the bill in which I am the complainant, and cover each case, case by case.

Q. When and under what circumstances did you first see these papers? A. On unlocking the drawers and opening them.

Q. You refer now to the trunks of Mr. Edmonds? A. Yes sir, the trunks of Mr. Edmonds.

Q. And after his death? A. Yes sir; after his death. I will say that I did not see those until this year.

Q. Please state whether or not the endorsements on those several envelopes are or are not in Mr. George B. Edmonds' handwriting? A. Every one of them.

Mr. BIRNEY: Objected to as sufficient foundation has not been laid and the witness being incompetent to testify to transactions with the deceased in which he became acquainted with his transactions.

Mr. TUCKER: I want the examiner to mark for identification the envelopes and papers referred to by the witness.

(This is accordingly done and the same are marked Complainant's Exhibit Nos. 2 to 26 inclusive.)

Q. Are you acquainted with Mr. Gilbert Moyers, the defendant? A. I have a slight acquaintance with him.

Q. Please state whether or not as administrator of Mr. George B. Edmonds you ever made any demand upon him for an accounting in the matter of the claims mentioned in your bill of complaint in this cause?

Mr. BIRNEY: Objected to as leading.

72 A. I went to see Mr. Moyers the latter part of March of the present year and told him I represented Mr. George B. Edmonds and that I found papers and a schedule and contract in my possession which showed that Mr. Edmonds had been interested in certain claims. Mr. Moyers said Yes; I asked him if he could tell me anything about it; he said, No, he could not then because he was very busy, that he had a large amount of those claims and that he was having considerable trouble with some of his clients with regard to fees, and when he got time which he hoped to very soon—he would look it over and come in again. The very last of March I was out of the city for a short time for about two weeks, and when I came back I went to him again and he said, Yes Mr. Edmonds had an interest in some of those claims but he said he did not know whether there was anything coming to Mr. Edmonds or not. He said he had paid Mr. Edmonds moneys at different times, and he said "I have laid out a large amount of money in the prosecution of cases that were not successful, and that have been rejected." And he said he could not tell until he had gone through to see what was coming to Mr. Edmonds and what not, but he said he hoped to get around to it so he could inform me. I had one or two notes from him after that. I wrote him at least—and then he answered and said he hoped in a week or two he could give me a statement of the standing of the cases. I waited—I cannot tell how long—and then I was speaking to Mr. Butterfield who was in my office——

Q. Do not relate any conversations with Mr. Butterfield. A. That is all. I just simply got no satisfaction from Mr. Moyers; he told me on the street once—he said "You know I am not well;"
73 he said he had met with an accident I think from jumping from a car or something, and said he hit his head and he felt very bad, and he said "I cannot work as I would like to" but he said "I will try to get around to it soon."

Q. Has he ever made any accounting to you as administrator of those accounts? A. No sir; he never had.

Cross-examination.

By Mr. BIRNEY:

Q. Did you ever have any assignment from Mr. George B. Edmonds of an interest in cases prosecuted by him?

Mr. TUCKER: Objected to as incompetent, irrelevant and immaterial.

A. No sir; never sir, at any time.

Q. Did you at any of your conversations with Mr. Moyers tell him that you had an assignment from Mr. Edmonds of an interest in these cases?

Mr. TUCKER: Objected to for the same reason.

A. I never told him any such thing because I never did.

Q. How many times did you see Mr. Moyers at his office and when? A. I think—I won't be sure, but I think that I saw him twice, maybe—once.

Q. At his office? Q. I know the first time I went in there he was not in; there was a lady there, evidently a clerk, and a man and they said he would be in in a few minutes, and when he came in he went in the back room. I went into the back room with him and all the conversation I had with him was in that room.

74 Q. Did you upon that occasion, or at any other time when you were in his office, in the presence of his clerks, tell him that you had an assignment from George B. Edmonds of these cases and were interested in them? A. I never told him I ever had an assignment in those cases from Mr. Edmonds because I did not. I never told any one that.

Q. Did you have an assignment from the heir of Mr. Edmonds?

Mr. TUCKER: Objected to as incompetent, irrelevant and immaterial.

A. I had an assignment from his brother, subsequent to the letters of administration.

Q. Was that brother his next of kin? A. His only heir and next of kin.

Mr. TUCKER: The question and answer are objected to upon the ground that it is not shown whether such assignment is in writing or not. If in writing the testimony of the witness is incompetent, the writing being the best evidence.

Q. Is that assignment in writing? A. It is.

Q. Have you it with you? A. I have not.

Q. Will you produce it at the next session?

Mr. TUCKER: I will on the hearing move to strike out the entire testimony of the witness with respect to the assignment in question upon the ground that the best evidence of the so-called assignment is the paper itself.

Mr. BIRNEY: Please produce the paper at the next session.

(By Mr. BIRNEY:)

Q. Where was it you found those papers in the envelopes
75 which you have produced? A. I found them in a trunk that is in my office.

Q. How long had that trunk been in your office when you found them? A. That trunk has been in my office I should say perhaps since last June.

Q. June of 1899? A. Yes sir.

Q. Where was it before that time—where did you find it? A. It was in his room on F street—on the north side between 6th and 7th—a room that I hired for him, and where he roomed and lived until he was taken with paralysis and I sent him to the Homeo-

pathic hospital where he was for one year. After he was released from the hospital they said he was incurable—and I took him over to Virginia and made arrangements with a friend of mine who had a farm there and he stayed there until he died.

Q. When did he die? A. I think the last day of October, 1896.

Q. How long then was it before his death when he left the office on F street, of which you have spoken—when did he go to the hospital? A. I think in 1894.

Q. Do you know what time in 1894? A. No sir, I won't say whether it was in 1894 or 1895; it might have been early in 1895 but he was in the hospital one year. In the mean time he had been in the insane asylum but they said he was harmless and that really he was so unhappy over there that they said there would be
76 no danger in his being out. So Dr. Witmer advised me that he would discharge him, but I must still keep his name on the books so that any time I could put him — without a recommitment.

Q. When was he in the asylum—what year? A. I think in 1893.

Q. Before he went to the Homeopathic hospital? A. Yes sir.

Q. Where did you first see this agreement with the list of names attached? A. That was handed to me in 1892.

Q. Where? A. In my office; it was brought to my office and handed to me.

Q. What did you do with it? A. I put it in my safe.

Q. And kept it there until when? A. I kept it there until after the appropriation bill had passed.

Q. Can you fix the dates better than you have already done, when you first made a demand on Col. Moyers in connection with this matter? A. No, sir; I cannot. I know it was in the latter part of March; that is all I can say, but when, I cannot say.

Q. Do you think it was after the 20th of March? A. It would be impossible for me to say.

Q. What do you mean by the latter part. Can you fix a limit? A. No, I cannot. I paid no attention to it at the time.

Q. Why do you say it was in March? A. Because I was
77 away the latter part of March—I went to Florida and was gone about two weeks and when I came back I went over to see Col. Moyers again.

Q. When was it that you went to Florida? A. I should say about the 20th of March.

Q. And you were gone about two weeks? A. Yes, sir.

Q. Your second visit to him was in April? A. Yes sir, about that.

Q. About what time in April? A. I could not tell you that. I know Mr. Moyers brought me a couple of notes.

Q. Was there more than one visit paid to him in his office? A. There was one but whether more than one I cannot say. I am inclined to think there were two. The second one was very brief. I just asked him "Col Moyers have you reached any conclusion yet?—

have you investigated?," and he said, "No, I have not." Then he went on and stated that he was very busy; that he had a great deal of trouble in getting these cases through, they were coming in with such a rush, and when he got around to it he would write me.

Q. I understand you to be uncertain whether that interview took place? A. Well, the first one took place; the second one, as I say, I am quite sure it was either there or I met him on the street—I met him on the street once or twice. I remember I met him on the street almost in front—just at the corner of 15th and F streets.

78 Q. You cannot tell then whether it was on the street or in his office that you saw him and had the conversation referred to or whether you saw him at his office once or twice. A. I know I saw him once, but whether I saw him twice I would not swear, but my impression is I did, but I saw him on the street at the corner of F and 15th and that is where he told me that he had had an accident and his head troubled him and he had hoped to get at the bottom of this thing by and by.

Q. Did you not in the presence of Mr. Moyers' clerk at his office, on the occasion of one of your visits there, say to Mr. Moyers that you did not claim that he owed Edmonds anything but that you had made certain advances on account of expenses incurred by Mr. Edmonds for his care and that you would like Mr. Moyers to make you good in those advances? A. I never had a word of talk with Mr. Moyers in the presence of any man that I know of.

Q. Or woman? A. Or woman.

Q. Did you make such a statement to him at his office? A. I told him that I was the guardian of Mr. Edmonds.

Q. I am not asking you what you told him. A. And I told him that when he died there was quite an amount of money owing me and that I hoped I could get enough to settle that account. I knew nothing about how many cases had been allowed—nothing about it.

79 Q. Didn't you say that you did not claim that Mr. Moyers was indebted in any way to you but you would like to get enough money to make you good? A. I never made any such statement to any person.

Re-direct examination.

By Mr. TUCKER:

Q. When you had the conversation with Mr. Moyers that you have mentioned, did you know the number of the names of the claims in which Mr. Moyers and Mr. Edmonds were interested? A. I knew nothing about that; I knew nothing about that. I made no investigation. If I may state this I was in the Court of Claim-, when Mr. Randolph spoke to me——

Mr. BIRNEY: The clerk of the court?

The WITNESS: The assistant clerk; Mr. Randolph, the assistant clerk spoke to me.

Q. Do not relate the conversation with him. That is not proper. Just relate what you did but do not relate any conversation that you had with any third person other than Mr. Moyers unless it was in his presence.

Mr. BIRNEY: That is objected to.

A. He called my attention to this claim—can I state what I told the clerk of the court?

Q. No, my question is simply this; when was it you made the investigation which developed, if such investigation did develop, the fact that Col. Moyers and Mr. Edmonds were jointly interested in the claims mentioned in this bill of complaint, before or after your conversations with Col. Moyers? A. After.

Mr. BIRNEY: Objected to as calling for a conclusion on the
80 part of the witness as to what the investigation developed.

Q. Now tell me whether these envelopes and their contents which have been identified are or are not now in exactly the same condition as they were when you took them from Mr. Edmonds' trunk? A. Exactly in the same condition.

HORACE S. CUMMINGS.

Sworn to before me this 13th day of December, 1899.

ALEXANDER H. GALT,
Examiner-in-Chancery.

JOHN W. BUTTERFIELD, a witness produced on the part of the complainant having been first duly sworn testified as follows:

By Mr. TUCKER:

Q. What is your residence and occupation? A. I live at 419 4th street, N. W. Washington, D. C.; I am an attorney at law.

Q. How long have you been a resident of Washington? A. Since 1861.

Q. Are you acquainted with Col. Gilbert Moyers, the defendant in this case? A. I am.

Q. Have you ever seen him in connection with the claims mentioned in the bill of complaint in this cause? A. Repeatedly.

81 Q. On whose behalf? A. Mr. H. S. Cummings.

Q. The complainant in this suit? A. Yes sir.

Q. Have you ever seen Col. Moyers write? A. Frequently.

Q. Are you familiar with his handwriting? A. I am.

Q. That familiarity with his handwriting has been gained in what way? A. I have seen him write——

Mr. BIRNEY: What do you want—the signatures to the contract?

Mr. TUCKER: Yes.

Mr. BIRNEY: I will admit it.

(It is stipulated by the defendant that the name Gilbert Moyers, signed at the foot of Exhibit No. 1 is in the handwriting of Mr. Moyers, the defendant, and that the interlineation in said typewritten agreement is also in the handwriting of the said defendant Gilbert Moyers.

Q. When did you first see Col. Moyers with reference to the claims mentioned in the bill of complaint on behalf of Mr. Cummings, the complainant? A. It was in the month of June.

Q. What year? A. 1899.

Q. What, if any, conversation did you have with him then? A. Mr. Moyers at his office on 17th street near the avenue stated to me when I saw him first that he did not owe Mr. Edmonds anything.

82 He became quite excited and I told him not to get in a heat about it; I had a list of the claims in my possession which Mr. Cummings handed me the names from the statute. I had in the meantime gone to the Treasury and found the statement.

Q. Did that list which you have just referred to—it was a list of what claims? A. It was a list of claims under the appropriation bill of March 9, 1899 for the Bowman Act claims.

Q. Were the claims in that list the same claims as are mentioned in this bill of complaint? A. The same claims.

Mr. BIRNEY: Objected to for the reason that the list is evidently in writing and should be produced.

Q. Have you that list? A. I have it in my pocket.

Q. Will you produce it? A. (Producing paper.) This list is a copy from Mr. Cummings' list.

Q. Is the list that you now hold in your hands the list that you showed Col. Moyers? A. It is the list that I had; I do not think I showed it to Col. Moyers. I told him I had a list of the claims.

Q. Just state what occurred between you and Col. Moyers? A. That interview was very brief. I stipulated for another interview and called to see him, and I may state now to close all the interviews, I called to see him regularly once a week, until the first week in September.

Q. Did you state to him the purpose of your calls? A. I told him that Mr. Cummings had directed me as counsel to close up that matter with Mr. Moyers.

83 Q. What matter? A. The matter of Mr. George B. Edmonds' association with Mr. Moyers as attorney in the prosecution of those claims. At the next interview Mr. Moyers stated that he would examine the claims and see what they were. He withdrew from the Court of Claims——

Mr. BIRNEY: Objected to.

The WITNESS: I will say that I saw up in the corner of Mr. Moyers' office in regard to the claims, and from my knowledge and

familiarity with bundles of papers, I knew what they were, he moreover stated that he was examining claims then and would soon complete his examination. I called to see him two or three times while that examination was going on. Mr. Moyers one day showed me a typewritten folio of claims that he had examined under the Edmonds contract and I think I am quite sure that he mentioned 16 claims which he had found in which he and Edmonds were attorneys. In one of those interviews I told Mr. Moyers there was about $60,000 of claims under the Edmonds and Moyers contract and that the fee in those claims would be about $13,000 and that the maximum presented for collection presented at 2½ % would leave about $11,000 or $12,000.

Q. You mean $13,000 of fees due whom? A. There were some $26,000 of fees all told and that Edmonds would have one-half of those fees, so that if we counted the maximum cost of prosecution at 2½ per cent. the amount that would be left would be somewhere from $11,000 to $12,000. Mr. Moyers stated that he had got to go over his books; that Mr. Edmonds had borrowed money of him; he had loaned him money and wanted to see how much he owed him but he had been sick and unable to complete his examination. That interview stopped on that occasion.

84 Now, while this examination *is* going on I called a number of times—three or four—on Mr. Moyers and on the occasion of my speaking about the examination that he had made and the amount that would be due on computation at the regular percentage, I said—"Now, can't you make an advance of about $5,000 on those claims," and he said No. He then added that he had not completed his examination. On another occasion I took up the contract which Mr. Cummings had handed me——

Q. You refer to what contract? A. I refer to the contract which has been in the hands of Mr. Birney.

Q. You refer now to the typewritten agreement which has been identified and which I now show you (showing witness the paper which has been identified and marked H. B. C. No. 1)? A. I refer to that. Mr. Moyers admitted the agreement. He did not dispute that at all.

Q. You showed him this agreement? A. I showed him this agreement.

Q. Did it have this schedule—this list—connected with it just as I have it in my hand? A. Just as you hold it in your hand.

Q. The schedule and list of names attached to it? A. Precisely. Mr. Moyers said that schedule was a forgery. He said that Mr. Edmonds had written it out himself, and he said moreover he could bring two clerks from his office to prove the forgery. Well, that ended that. I called later to see Mr. Moyers to see if he had completed his examination and there was no one in his office; there are three or four rooms all connected by doors and I passed

85 from there through the rooms and into the rear room and found Mr. Moyers on the sofa; he had been very sick, so he

told me. He was reclining. Mr. Moyers could not do anything then. He had not finished his work and had not made the examination of his books to see what the account was between him and Mr. Edmonds so there was nothing concluded then. During these interviews Mr. Moyers wanted to know, from me, in regard to Mr. Cummings' connection with the claim, and I told him that Mr. Cummings had an assignment of those claims from Judge Edmonds who was the sole heir and sole brother of Mr. George B. Edmonds. I stated to him at that time "Would he be willing to accept that as authority for closing a settlement with me?" He said he did not know about it; he was in doubt. The next time I saw him he said that inasmuch as Mr. Cummings had counsel he thought he would have counsel, so he named to me Mr. Chaney, formerly assistant attorney of the Court of Claims. Mr. Chaney was absent three weeks, I think or more. During that period I called each week to know when Mr. Chaney would be back. Mr. Chaney was first in a town in Indiana, his native place. I called also at Mr. Chaney's office to see if he had returned as I went by to see Mr. Moyers. Mr. Moyers stated that he would be in town on a certain day looking up some business there for him. After those three weeks or so Mr. Chaney returned and I saw him and he did not seem to know anything about the matter; he said he would see Mr. Moyers. He did so and subsequently I saw Mr. Chaney and we appointed a day in which we would have a hearing in this matter but circumstances prevented Mr. Chaney attending or doing anything. I called in the morning and this was the first of September, and Mr.
86 Chaney and I went up to Mr. Moyers' office. I told him I would not go in as he wanted to see Mr. Moyers and I remained over to the Court of Claims and when he returned to just call for me, which he did, and when he returned he said——

Mr. BIRNEY: I object.

Mr. TUCKER: Go on and state what he said.

The WITNESS: Mr. Chaney said "I am going away;" I told him I was going away and I told him I was going away that week too and I thought we could settle the whole thing up at once. Mr. Chaney said he wanted to go away, and that ended it. This was during the week and the Sunday following which was the 17th of September, I left town so that it was somewhere from the 10th to the 17th, the last interview.

Q. It appears from the bill of complaint that Mr. Cummings was appointed administrator of the Edmonds estate on August 22nd, 1899, and that averment is admitted in the answer. Please state whether your conversation with Mr. Moyers in which you mentioned the fact that Mr. Cummings had an assignment from Judge Edmonds of those claims, was before or after the appointment of Mr. Cummings as administrator? A. I had the assignment and took it out of my pocket the same as you would take out any paper; I did not hand it to Mr. Moyers; I told him there was an assignment.

Q. Was this before or after August 22nd, 1899? A. It was before, at least two months before. It was by repeated interviews of Mr. Moyers that I came to the conclusion that he would not make a settlement unless Mr. Cummings——

Mr. BIRNEY: I object to that.

87 A. (Continuing:) Unless Mr. Cummings got legal acquittance. I advised Mr. Cummings then to take out letters of administration as we could not settle the matter.

Mr. BIRNEY: Objected to as incompetent.

The WITNESS: I afterwards called on Mr. Moyers and stated to him in his office that Mr. Cummings had taken out letters of administration of George B. Edmonds at Fairfax, and I had the letters of administration in my pocket so if there had been any question I would have shown them to him.

Q. Please look at the exhibits from 2 to 4 attached to the bill of complaint in this case, one of which is a postal card which purports to be signed by Gilbert Moyers, dated July 21, 1899; another of which is a letter dated August 3rd, 1899, purporting to be signed by Gilbert Moyers, and a third being a letter dated September 11, 1899, purporting to be signed by John C. Chaney, and state what you know about those papers? A. You mean Exhibit No. 2?

Q. Two, three and four. A. (Examining.) Exhibit No. 2 is a postal card which I received through the mails.

Q. In whose handwriting is the signature? A. It is typewritten and signed by Gilbert Moyers. I would swear to that if I was in the court of Heaven; and the third is like it.

Q. Look at the letter Exhibit No. 3—the typewritten letter—— A. (Examining.) Exhibit No. 3, that is ditto. That is Mr. Moyers' signature. I received that through the mails.

88 Q. Now, the next one (referring to Exhibit No. 4, the Chaney letter). A. Now, in regard to that, all I know is that I received it signed by Mr. Chaney and I called to see Mr. Chaney, but I never saw him write in my life.

Q. You received it through the mails? A. I received it through the mails, and I called to see him at his office. The next day I called to see him—this was the 11th, I received it in the afternoon too late to call that day, and the next day at 12 I called to see him and I went up to Col. Moyers.

Q. The signature to the postal card and the letter of August 3rd. are in Mr. Moyers' handwriting? A. (Examining.) Without any doubt.

Mr. TUCKER: I offer in evidence Exhibits Nos. 2, 3 and 4 attached to the bill of complaint in this case.

Mr. BIRNEY: Counsel for the defendant objects to the offer of Exhibit No. 4, the same not having been sufficiently proved.

Cross-examination.

By Mr. BIRNEY:

Q. When was it that you first saw Mr. Moyers in this matter? A. I saw Mr. Moyers in June.

Q. At his office. A. Yes sir, at his office.

Q. At that interview did you claim to him that Mr. Cummings had an assignment from George B. Edmonds himself of all his interest in those claims? A. I did not. I distinctly told him it was an assignment from Judge Edmonds the brother of George B.
89 Edmonds.

Q. Was that at the first interview? A. That was at the first interview.

Q. Can you now state from recollection the date of that assignment? A. I know very well that the assignment——

Q. My question is can you give the date of it. A. I cannot give you the date. I know the assignment is signed by Judge Edmonds and witnessed by his wife.

Q. Have you that assignment now? A. No sir, I have not. When Mr. Cummings commenced his action I delivered him up all the papers that I had.

Q. Have you seen the assignment since you delivered it to Mr. Cummings? A. I have not.

Q. Was that before or after the suit was brought? A. It was before the suit was brought. I delivered it up in September.

Q. September, 1899? A. Yes sir; during the week between the 10th and 17th.

Q. And you say that you did not at your first visit, or at any other visit, claim that Mr. Cummings had an assignment from George B. Edmonds, deceased? A. I never entertained any question on that. It was not George B. Edmonds, it was Judge Edmonds, the brother of George B.

Q. Did not Mr. Moyers remark after a statement of the kind I have indicated, that Edmonds could not give an assignment, that he was insane at the time? A. There was no talk about George
90 B. Edmonds' assignment. He never mentioned the fact that he was insane. I did not know that he was insane; I did not know anything about it. It was Judge Edmonds, the ex-Commissioner. The question of his insanity, or his ill health never was under discussion between Col. Moyers and myself.

Q. How long have you practiced before the Court of Claims? A. Since 1887, 1888 or 1889.

Q. Do you recall the date of the Bowman act? A. On March 3rd, 1883.

Q. The claims that you have spoken of as contained in the list that you have mentioned—were they claims arising under the Bowman act? A. Under the Bowman act and two or three I think in the appropriation under the act of March 3rd, 1887, the Tucker act it is called.

Q. How long were adjudicated claims under the Bowman act awaiting appropriations by Congress?

Mr. TUCKER: Objected to as beyond the scope of the direct examination.

A. From the 3rd of March, 1891, until the 3rd of March, 1899.

Q. No appropriations were made during that period? A. No appropriations were made.

Q. Have any claims been adjudicated under that act? A. None whatever.

Q. Have you any personal interest in this claim? A. No, sir; only as counsel, as yourself.

Q. Then you are of counsel for Mr. Cummings? A. I am with Messrs. Davis and Tucker.

Q. Beyond that you have no interest at all; —. I never
91 heard of them until Mr. Cummings brought them to my attention.

Q. You have stated that at your first interview with Mr. Moyers you stated to him that the fees were about $26,000. Please state how you arrived at that conclusion? A. In the first place—I will refresh my memory by a little statement; I had the list of claims from Mr. Cummings in pencil; I then reduced them to pen and ink writing and classified them—the number and date of warrant, names and estates, amount allowed, when paid, the settlement and who drew the money as attorney or claimant. That I had to learn from the auditor of the State Department and the Secretary of the Treasury's offices and the warrant room. Then there are several that were not paid at the time; all those that were paid through Mr. Moyers I found to be——

Q. I did not ask you that. I asked you who told you what the fee was to be in these cases? A. In the contracts which you have had before you this afternoon the fee is stated. Now before I had found that I wrote and stated—or rather I wrote to Mr. Fitzhugh Lee, and he said——

Mr. BIRNEY: I object.

The WITNESS: Well let that go. In every one of those cases there is a contract, and the contract specifies the fee.

Mr. TUCKER: You refer to the cases mentioned in the bill of complaint?

The WITNESS: Yes, sir. Then I simply multiplied the amount paid by the fee and divided it into two parts and the gross fee——

Q. I have not asked you that.

92 Mr. TUCKER: Go on and finish your answer.

Mr. BIRNEY: I shall object to his stating his conclusions. I asked him a specific question.

The WITNESS: I found each claim had a fee or per cent. attached to it; they ran from 33 to 50.

Q. Then your information was derived entirely from the papers which have been offered here in evidence? A. Entirely.

Q. You know nothing then beyond what those papers showed you? A. Nothing except what Mr. Moyers had told me. Some of those cases I had seen in Mr. Moyers' possession and knew about what the fees were.

Q. How did you know? A. I know from what Mr. Moyers had stated himself.

Q. When? A. Well, this was prior to March 3, 1899.

Q. You have not seen him about this case? A. Well, some of them happened to run into this list of Edmonds' claims—these papers here.

Q. Had Mr. Moyers spoken to you about any particular claims there? A. He had spoken to me about the Fitzhugh claim and we spoke about the Anna Hunt claim of Rodney. He said that Mr. Edmonds had nothing to do with that claim.

Q. That was at your meeting with him in June? A. That was at my meeting with him in June.

Q. At the meeting in March had you spoken about any of those claims? A. I told you that before March—before the appro-
93 priation was made—circumstances that need not be repeated here made me know of certain fees and when I examined those contracts I found that Mr. Moyers and I had talked about the same thing. The Fitzhugh case, for instance, it was merely a coincidence.

Q. Your knowledge was in fact obtained then from these papers?

Q. When were you first employed by Mr. Cummings? A. I went over to see Mr. Moyers perhaps within a week after he engaged me.

Q. That was in June, then? A. That was the first of June, yes sir.

Q. About what time? A. I should say it was the very first of the month.

Q. The first day? A. No sir; I would not specify that *that* it was the very first, for I saw him a number of times I know before July came in.

Q. You would say the first four or five days? A. I would say so. My rule was to call and see him once a week.

Q. Have you anything from which you can refresh your recollection as to the exact time? A. Only the letters that are found in that exhibit. Mr. Moyers would have an appointment with me to call and circumstances prevented his meeting the appointment and then he would write me a note.

Q. But you cannot fix more definitely than you have the occasion of your first visit? A. No sir; I did not consider it material, but after that I called regularly once a week unless I had a note from Mr. Moyers.

94 Re-direct-examination.

By Mr. TUCKER:

Q. You have referred to the fact that in one of your conversations with Mr. Moyers he stated that this schedule attached to this typewritten agreement of February 6, 1888, was a forgery. I wish you would state as nearly as you can recall the exact language that was used by Mr. Moyers in that connection. A. I cannot recall the exact words, only the word "forgery." Mr. Moyers stated that was a forgery; Mr. Edmonds had come into his office and taken his book and written down that schedule from his books.

Q. What did you reply to that? A. I replied to him that that was an hallucination; that Mr. Edmonds had never forged that; that was an original paper. I did not treat that as a fact at all.

Q. When was that conversation? A. That was either the first or second time I called to see Mr. Moyers.

Q. In June 1899? A. Yes sir.

Q. In your subsequent interviews with him did he ever claim or reiterate that that schedule was a forgery? A. That never was brought up again after that; but Mr. Moyers was going over his papers—the Edmonds and the Moyers papers—and when he had completed it then he would be able to inform me just how the case stood and he would be going over his books showing the money that he had loaned Mr. Edmonds.

95 Q. When he made the remark — attached to this agreement of the 6th of February, 1888, was a forgery, did he say anything about any schedule that was actually attached to that typewritten agreement? A. I held it in my hands, and I said "Mr. Moyers that is no forgery;" I said "That is the way it came out; I said There is no forgery about that; well, he repeated that Edmonds came in there and copied it off his book and he could prove it by two of his clerks.

Q. Did he say anything about where, the true schedule was referred to in this agreement? A. No sir, he did not say anything about that. He contented himself with saying that it was a forgery and then went on to tell how it was done; he did not give the names of anybody only that Edmonds did it in his office and also from his books—copied the list from his books.

Q. Did you at any time call his attention to the fact that there were in Mr. Cummings' possession the contracts on those claims that Mr. Edmonds had gotten?

Mr. BIRNEY: Objected to as that fact does not appear and the question is leading.

A. I confine myself to the fact that I had the papers in my possession and went into no further details.

Q. These claims mentioned in the bill of complaint were claims filed in the Court of Claims under what act? A. Most every one of them was filed under the act of March 3, 1883, known as the Bow-

man act. Now, I do not know, only from what Mr. Moyers told me, that there were any filed under the other act, but Mr. Moyers said there were two or three claims that he had under the act of March 3, 1887, the Tucker act. That is immaterial because the prosecution is substantially the same. That was the information
96 I got from him and it was volunteered; it came out accidentally in the conversation, but it was immaterial.

Q. At the interview at which Mr. Moyers told you that was a false schedule—— A. He did not say false; he said it was a forgery.

Q. I will call it a false schedule or forgery. Did he not produce to you the duplicate of the contract? A. No sir, he produced no paper whatever.

Q. Didn't he inform *me* that he had a duplicate of the contract attached to that list? A. No, sir; he did not.

Q. He said nothing to you about that? A. He said not a word and I did not ask him a word

Q. Do you know who was present at that interview beside you and Col. Moyers? A. The only person in the room—Mr. Moyers sat at a desk, just as this gentleman is sitting, facing the west; I sat over there on the south, and back of us at a desk at the south wall was Miss Agnes Daley.

Q. Didn't Mr. Moyers go to his safe in your presence and take out a duplicate of this contract. A. He did not get out of his seat. He sat at his seat all the time.

Q. You have not seen in Mr. Moyers' hands the duplicate of that? A. I have never seen in his possession or heard of it through him or anybody else; this is the first intimation that I have had that he has one.

JOHN W. BUTTERFIELD.

Subscribed and sworn to before me this 13th day of December, 1899.

ALEXANDER H. GALT,
Examiner in Chancery.

97 Adjourned until Saturday, December 16, 1899, at 2:30 p. m.

WASHINGTON, D. C., *December* 16, 1899.

Met pursuant to adjournment at the same place.
Present: The same counsel as before.

JAMES B. EDMONDS, a witness produced on the part of the complainant, having been first duly sworn, testified as follows:

By Mr. TUCKER:

Q. State your full name and residence. A. James B. Edmonds; 1625 K street, N. W.

Q. You have been a resident of Washington for some years? A. About 22 years.

Q. And were formerly Commissioner of the District? A. Yes, sir; for some time.

Q. You have been an invalid for some years I believe? A. Yes, sir.

Q. Are you a brother of the late George B. Edmonds? A. I am a half brother.

Q. About when did he die, as nearly as you can recall? A. I should think somewhere about three years ago but I would not be positive as to the date. He died in Virginia and I was in Washington here ill.

98 Q. He was a lawyer by profession I believe? A. Yes, sir.

Q. Engaged in the claims business in this city for some years? A. In this city. He was law clerk in the Land Office and his poor health caused him to resign and ultimately when he got his health—at least partially—he was asked to prosecute a number of claims in different parts of the country—in the Court of Claims I think that is where he told me.

Mr. BIRNEY: I object to that.

Q. That of course goes out. The question is answered without that. Are you familiar with your brother's handwriting? A. Very.

Q. You have seen him write during his lifetime? A. Yes, sir.

Q. Please look at the paper I hand you (exhibiting to witness paper marked for identification H. B. C. No. 1) and state whether or not the signature in the typewritten agreement is that of your late brother, George B. Edmonds? A. I should say it was undoubtedly.

Q. Look if you please at the sheets of paper attached to that typewritten page and state in whose handwriting the names contained on those sheets is? A. (Examining.) It is George's.

Q. You mean, of course, George B. Edmonds. A. Yes, sir.

Q. Tell us, what you know about that paper that you hold in your hand, by which I mean the typewritten agreement and the schedule attached to it? A. Well, I am less positive as to the identity of papers left in my possession, but I think this is

99 one of the papers that George handed me to put in my safe as he had no fireproof place in which to put papers and he was accustomed when he had a paper that was valuable, not to keep it himself but come to me if he had no immediate use for it. I have a safe and put it in the safe and let it lie there.

Q. When was this, as near as you can recall—how many years before his death? A. I am not certain as to dates but it laid in my safe for some time; I suppose this is it; it looks like the thing. He talked to me about it and I saw the name of Moyers or some such name—but he told me——

Mr. BIRNEY: I object.

Q. Do not relate any conversation with him. What I want to know is whether you recall putting in your safe at any time for

your brother any paper purporting to be an agreement between himself and one Moyers with a list of claims attached to it?

Mr. BIRNEY: I object to that as leading.

A. As near as I can recollect I had such a document and put it in my safe and it laid there some time?

Q. What did you do with that document? A. I handed it, when I found he had gone insane—to his guardian, Mr. Cummings.

Q. By Mr. Cummings you mean Mr. Horace S. Cummings the complainant in this suit? A. Yes sir, this gentleman here. He came to me and talked about the matter and either in the presence of my brother, I am not certain, I told him.

Mr. BIRNEY: I object to any conversation.

Q. Just state what you did? A. I handed him those
100 things that he might look over them; they might be valuable for George, and then I handed him all the agreements I had for him to take care of and do as he thought best as the guardian.

Q. Will you please look at this book that I hand you (handing witness a book which for the purpose of identification is marked H. S. C. No. 27) and state whether you have examined that book either at present or at any time previous to your testifying now? A. I have just examined it.

Q. Have you examined it in order to see in whose handwriting the entries in that book are? A. I have.

Q. In whose handwriting are those entries? A. In George B. Edmonds'.

Q. I hand you a batch of 24 envelopes, each containing an endorsement, (handing witness papers which have heretofore been marked for identification Nos. 2 to 26) and ask you whether you have examined the endorsements on those envelopes. A. Yes, sir; I have.

Q. In whose handwriting are these endorsements? A. George B. Edmonds', I should think without doubt.

Q. I hand you an envelope containing a printed label reading "If not delivered in ten days return to George B. Edmonds, attorney at law, 128 Corcoran building, Washington, D. C." and ask you to look at the endorsement on that envelope and state in whose handwriting that is? A. (Examining.) George B. Edmonds I should say without doubt.

(The examiner was requested to mark the envelope for identification H. S. C. No. 28, which was accordingly done.)

101 The WITNESS: I think I saw this book in his office; it was a little book like this—I would not be positive about that. That was when he first went into the Corcoran building. He got a book something like that and I presume that is the one, but I would not be positive about it.

Cross-examination.

By Mr. BIRNEY:

Q. At the time you delivered the papers to Mr. Cummings, as testified, how many papers did you deliver to him? A. Well, I cannot state; I delivered all that I thought were any importance in his business affairs.

Q. How many papers belonging to your brother had you? A. Well, at least two or three. I would not be certain about the number but I would say that I remember that there was a contract with a man whose name I have forgotten, something that he had gotten me to keep; there must have been two, and there may have been three, and there may have been four.

Q. Did you keep any of those papers or did you turn them over to Mr. Cummings? A. I think I turned them all over to Mr. Cummings. I intended to if they had any value.

Q. Did you examine them before turning them over? A. No sir; I just examined them, just simply saw from the endorsements that they were in his handwriting and turned them over to him as I received them.

Q. Had you at any time before that examined them? A. Not any further than I would examine them with my brother when he handed them to me; he would tell me what they were and I
102 would take them. I had a pigeonhole in my safe where I put his papers.

Q. Had you done more than to receive them from your brother's hands and at his request put them in your safe? A. Well, I think I examined them in a casual way; looked at them in a casual way, not so particularly as I would if they were concerning my own affairs. I considered them as his matters and I remember particularly inquiring about who Moyers was.

Q. I have not asked you as to a conversation, but have you examined the papers in such wise as to know their contents? A. Naturally I did because I was interested to have him succeed, and was paying his office rent and other bills, and was asking him how he was getting on, and I know that I read over some of his bargains or contracts, and perhaps some of them I did not. I cannot positively state. It has been a long time ago.

Q. How long has it been since he intrusted you with the last of these papers? A. I cannot recall any exact dates, except I know it was prior to the spring of 1893 because since that time I went West to Colorado and came home and was almost directly stricken with paralysis, and I have not had any of these business transactions since.

Q. You have not examined them, those papers from the time you received them down to the time you delivered them to Mr. Cummings, had you? A. Not that I remember.

Q. Did you mark them in any way? A. No sir; just simply laid them in the pigeonhole, so far as I recollect.

103 Q. Then you are unable to say whether the paper shown you is or is not the paper you had in your safe? A. Well there is the doubt that such time and so long an illness would naturally create. My memory is not so good now as it formerly was. I find myself troubled to fix exact dates in time now and therefore I would not like to be very positive about a particular thing so long ago as that.

Q. Well, that is the case, then, that you do not really know whether that paper is or is not the paper that you had in your safe but you think it is? A. I think it is; I am quite sure it is because it was just like that. I had a conversation that recalls it to my mind—I do not mean to give the conversation. It was something that looked like that but I cannot say. Whether we might not have drawn up a similar one or had a duplicate, and it may be that, I can only say that that looks like it, and I believe it is it.

Q. You did not read it at the time you turned it over to Mr. Cummings? A. I won't state positively that I did or did not.

Q. How long ago was it that you turned it over to Mr. Cummings? A. It was some time prior to the spring of 1893. I date that time from the time I went West. I was taken sick West and came home and had paralysis and since that time I have not done much of anything.

Q. How long before that was it that your brother had put the papers in your possession which you then delivered to Mr. Cummings? A. I would say it was some months but I cannot be

104 positive as to time.

Q. Was it some months or some years? A. I would not say some years because he was not in the Corcoran building; when he was in the Corcoran building he was accustomed to come and see me often and I occasionally would see him and talk about his affairs and look his papers over and his books, but I would not like to specify dates prior to the spring of 1893.

Q. That was the time you delivered the papers to Mr. Cummings? A. No, not the time; I say it was prior to that time.

Q. How long had your brother lived in Washington before the spring of 1893? A. He came over some time in the eighties but I cannot be positive as to what year.

Q. You were then living here, were you? A. I was living here, yes, sir.

Q. Where did he have his office at first? A. At first he had no office, except he was law clerk of the Land Office. Mr. Russ Clark, a member of Congress, came to me and said he would like to have my brother—they were political chums and were of opposite politics to me—he would like to have him come to Washington to live, and that there was a clerkship—they wanted a law clerk in the Land Office and he did not know anybody in his district who would fill the bill. I cannot quite fix the date.

Q. Did he not leave valuable papers with you, or those which he

valued from the time he came to Washington? A. No sir;
105 it was after he had gotten out. He might have left some but I do not remember. It was mainly after he set up business in the Corcoran building.

JAMES B. EDMONDS.

Signed by the examiner by stipulation between respective counsel. Sworn to before me this — day of December, A. D. 1899.

ALEX. H. GALT, *Examiner.*

HORACE S. CUMMINGS recalled.

By Mr. TUCKER:

Q. Mr. Cummings you testified at the last session that this agreement between Edmonds and Moyers of February 6, 1888, with the annexed schedule, was handed to you in 1892 by Mr. Edmonds. Which Mr. Edmonds did you mean? A. J. B. Edmonds.

Q. That is the brother of George B. Edmonds? A. Yes, sir.

Mr. BIRNEY: I would like to inquire if the witness brought with him the assignment asked for at the last session?

The WITNESS: I looked for that assignment. I said I had turned it over to Mr. Butterfield. I went to see Mr. Butterfield. I suppose he had turned it over to Mr. Tucker with the papers and I went to see Mr. Butterfield and I understand he said he returned it to me.

Mr. TUCKER: You have not got it?

The WITNESS: No sir; I have not.

By Mr. TUCKER:

Q. Please state whether the paper purporting to be the agreement with the schedule annexed, which has been heretofore
106 marked for identification H. S. C. No. 1, is the agreement and schedule which J. B. Edmonds delivered to you then? A. It is identically the same paper and in the same condition.

Q. I hand you an envelope which has heretofore been marked for identification H. S. C. No. 23, and ask you whether you recognize that envelope? A. (Examining.) I do. That is the envelope in which the schedule was handed to me.

Q. After the delivery of this agreement and schedule in this envelope to you what did you do with those papers? A. I put it in my safe and it has been there until the present year.

Q. You say you put it. What do you mean by that? A. I put the envelope containing the schedule, as handed to me by J. B. Edmonds, in my safe and it has been there ever since.

Q. Did it include the agreement? A. The agreement.

Q. State whether the typewritten agreement and the schedule were attached together as they are now? A. Exactly as they are now. They have never been disconnected as I know of.

Mr. TUCKER: I offer in evidence the typewritten agreement with the schedule annexed, heretofore marked for identification H. S. C. No. 1, and the envelope heretofore marked for identification H. S. C. No. 28.

Mr. BIRNEY: Counsel for the defendant objects to the admission in evidence of the schedule attached to the agreement, the same not having been sufficiently proven to be a schedule assented to by the defendant at any time as the schedule intended by the typewritten agreement, but has no objection to the typewritten agreement and consents that that be accepted in evidence.

107

It is hereby stipulated by the solicitors for the respective parties that the envelopes heretofore marked for identification H. S. C. 2 to 26, contained papers purporting to be contracts, and other papers relating to said claims, mentioned in such contracts bearing date in 1886, and also containing other papers relating to such claims; and also papers so endorsed as to indicate the date of the receipt of such contracts.

Mr. BIRNEY: Counsel for the defendant reserves the right of objection to the said papers for want of competency or relevancy.

By Mr. TUCKER:

Q. I understand you to have testified that those envelopes, with their contents, were found by you among the effects of the late George B. Edmonds? A. They were, some 320 more.

Q. Three hundred and twenty more what? A. Corresponding envelopes; those with other claims that are to be or have been considered or rejected, were all similar to these.

Mr. TUCKER: I here offer in evidence the envelopes and their respective contents heretofore marked for identification 2 to 26.

Q. I hand you a book which has heretofore been marked for identification H. S. C. No. 27, and ask you whether you have ever seen that book before? A. (Examining.) I found this in a trunk that belonged to George B. Edmonds with a large number of contracts and correspondence contained in envelopes similar to those put in the case, together with some four or five account books. To study it out, I compared the envelopes with the contents of the envelopes, and the two books—the index—and then the large book and this book.

108

Q. I hand you another book and ask you whether that is the large book you refer to? A. This is the large book (examining one marked for identification H. S. C. No. 29).

Q. Referring to this so-called large book, just marked for identification H. S. C. No. 29, I ask you where that came from? A. This is the book that came from the trunk containing the papers of George B. Edmonds.

Mr. TUCKER: I offer in evidence the two books last identified,

with such entries therein as relate to the claims described in the bill of complaint and the schedule known as Exhibit No. 1 to such bill of complaint.

Mr. BIRNEY: Counsel for the defendant objects to the admission of the books in evidence, the same not having been connected in any way with the defendant, and as incompetent, they not having been shown to be the regular books of accounts kept in the ordinary course of business by the deceased.

(By Mr. TUCKER:)

Q. Please state whether among Mr. George B. Edmonds' effects you found any other books containing entries relating to the claims mentioned in the bill of complaint in this cause, or in the schedule known as Exhibit No. 1 to that bill? A. That one there (indicating a book with a canvas cover).

109 Q. I hand you the book you have just indicated and ask where that came from? A. I found it in the trunk containing the papers of George B. Edmonds.

Mr. TUCKER: I offer that book in evidence.

The same is marked Complainant's Exhibit H. S. C. No. 30.

Mr. BIRNEY: I object to that on the ground stated in the last objection.

Q. State whether those three books are all the books that you found among the effects of the late George B. Edmonds containing entries of the claims I have just mentioned? A. (Examining.) Yes, sir. The fourth book, which has an index of the cases—just an index of the cases—and this book, are made entirely in the handwriting of George B. Edmonds.

Mr. TUCKER: I offer in evidence the last book identified by the witness and described by him as an index.

Mr. BIRNEY: Counsel for the defendant objects to this book on the same ground.

Q. Are those four books that you have just mentioned all the books that you found among the effects of the late George B. Edmonds, containing entries to the claims I have just mentioned? A. All I know of to this date.

Mr. TUCKER: I offer in evidence the last two books mentioned by the witness and renew my offer of all four of the books in evidence, with such additional explanation as the witness has made of them.

Q. To recur for a moment to your testimony relating to
110 the so-called assignment of these claims by J. B. Edmonds. Without stating the contents of this so-called assignment, please state the purpose for which the same was procured?

Mr. BIRNEY: Objected to as incompetent, irrelevant and immaterial.

A. After I asked Mr. Butterfield to make a settlement of this matter with Mr. Moyers—I not being able to myself—Mr. Butterfield had——

Q. Do not relate any conversation with Mr. Butterfield. A. Well, in order that he might be able to make a settlement with Mr. Butterfield, as I gathered the impression that he might be able to make a settlement—in order to give him full power to make the settlement with Mr. Moyers, I had this assignment made to me by Mr. Edmonds so that I could make a clear settlement with Mr. Moyers.

Q. Have you made a search since the last session for that assignment? A. I have.

Q. Have you made such search in all places where it would be likely to be? A. I have, and in a good many places where I would not suppose it was likely to be.

Q. How diligent have your efforts been to find it? A. I have looked in every place that I could imagine it would be placed.

Q. Have you been able to find it? A. I have not. I still think I may run across it somewhere.

Q. Please state what that assignment contained?

111 Mr. BIRNEY: Objected to as not sufficient foundation of the proof of the loss of the paper having been made.

A. It read somewhat in this way: For and in consideration of one dollar I, James B. Edmonds, the next of kin and sole heir at law of George B. Edmonds, deceased, do hereby convey, assign and set over to Horace S. Cummings all my right, title, and interest in the estate of the said George B. Edmonds. Signed by James B. Edmonds and witnessed by Lydia M. Edmonds, his wife, and dated—that was some time in June; that is my nearest recollection.

Q. Of what year? A. This present year, after I had tried to make a settlement with Mr. Moyers.

Cross-examination.

By Mr. BIRNEY:

Q. Prior to that assignment George B. Edmonds was indebted to you, was he not? A. He was indebted to me in a small amount.

Q. How much was it? A. I could not tell. I would say perhaps several hundred dollars. I have been his guardian.

Q. Did he leave any other debts? A. None that I know of.

Q. If this suit shall be successful the entire proceeds will come to you? A. As administrator.

Q. And under this assignment you will have the right to retain the whole amount, will you not? A. No: I suppose not. The assignment was given for the purpose of enabling me to make a clean settlement that would be satisfactory to Mr. Moyers, and I
112 will state further that when the question was raised as to whether that would be sufficient or not to make the settlement, it being told me——

Q. By whom? A. Mr. Butterfield, that he did not think—

Mr. BIRNEY: I object to what Mr. Butterfield may have said.

The WITNESS (continuing): It having been conveyed to me, or the impression having been conveyed that that would not be sufficient, I simply went over to Virginia at the place of his residence and death and took out letters of administration in order to be able to make a clean settlement.

Q. Has Mr. James B. Edmonds any right to claim anything from you from the proceeds of this suit? A. Has he a right to?

Q. Yes? A. I expect he has, as an heir at law.

Q. Was not that assignment made with the understanding that no further claim would be made upon you by Mr. J. B. Edmonds, and that anything that might come from these claims would inure to your benefit. A. We had no understanding at all in regard to anything except that I was to clean up whatever George's estate might be, if there were any outstanding debts or claims. I do not know whether that understanding was in or not but I made that reservation myself.

Q. Was that incorporated in the agreement? A. No, sir.

Q. Then it was a mental reservation with yourself, if there
113 was any reservation? A. No sir; because I told him plainly that there were certain things that I wanted to have settled up. In the first place there was an amount that I thought should be paid to the people who took care of him during his last illness; and the next thing, I wanted to have the lot in the cemetery at Fairfax fixed up in shape, as I thought it should be, and then I understand that there is a doctor's bill over there still outstanding. That was to be paid.

Q. Were you not personally liable for this doctor's bill? A. No, sir.

Q. Were you not responsible to the people who had cared for him in his last illness, of whom you have spoken? A. No sir.

Q. Who are those people? A. A man named Charles Taylor.

Q. Has he proven any claim against the estate? A. He has not.

Q. Then you would regard anything you would pay him as a gratuity? A. In one sense I should, for I think he ought to have it.

Q. Except then for such things as you might choose to pay, it is your expectation that you will keep the proceeds of the suit? A. That is to be settled between Mr. Edmonds and myself.

Q. The assignment in its terms was a complete assignment of all interests? A. It was given as a complete assignment for the purpose of being able to make a complete settlement.

114 Q. Is that stated on its face? A. No sir.

Q. And according to its terms it is a complete assignment to you of all interest in that estate? A. Simply because no other assignment would enable me, in my opinion, to have made a complete settlement.

Q. But that is the fact, that it is a complete assignment on its face. A. Yes sir; it was a complete assignment on the face of it.

Q. You have been shown a book which you have spoken of as the docket book, being the book marked H. S. C. 29. Do you know in whose handwriting the entries in that book are? A. I have not the slightest idea, only I know that Mr. Edmonds had a person in there working with him.

Q. This is not in the handwriting of Mr. George B. Edmonds? A. Not as a rule. I find in places his hand-writing.

Q. In whose hand-writing are the entries in the book, Exhibit H. S. C. 30? A. I cannot tell you. (After examining.)

Q. They are not in the handwriting of George B. Edmonds? A. Not as a rule, I should say not.

Q. Are there any? A. I do not know; I could not say without I looked them all over. If there are any in his handwriting I could tell.

Q. But as far as you have looked through the book you do not recognize any? A. I would not be sure. I think there are some entries there in his hand-writing but I cannot state anything
115 without examining it. I am pretty sure there are some entries there in his hand-writing but I cannot state without making a page for page examination. That book (indicating Exhibit H. S. C. 27) is entirely in his hand-writing.

Q. Have you examined all the entries in H. S. C. 27? A. I think I have examined every individual entry.

HORACE S. CUMMINGS.

Sworn to before me this 16 day of December 1899.

ALEX. H. GALT,
Examiner-in-Chancery.

JOHN W. BUTTERFIELD, re-called for further cross-examination.

By Mr. BIRNEY:

Q. Have you made an examination of your papers and effects to discover whether you have this so-called assignment from J. B. Edmonds to Horace S. Cummings? A. After the session closed on Wednesday I looked for that paper—that assignment—and I did not find it. On Wednesday I came here about five minutes before three o'clock with a bundle of papers and that bundle of papers had been tied up with a red string since the 16th of September, and that I had not looked into until the date I came here. That contained the papers—Mr. Cummings' contracts. I made a mistake there. There were some contracts that I got since my return from Mr. Cummings, and thought they might be wanted here so I brought them up and delivered them to him. Now I took at that time every paper that I had received from Mr. Cummings and brought it here. It is

possible that that paper—I do not say it is absolutely a fact
116 but that is my distinct impression—that I delivered that paper to Mr. Cummings on the 16th of September, Saturday. I went away Sunday night.

Q. Will you make a diligent search among all papers and in every place where that assignment may be apt to be and report at the next session whether you have been able to find it and if you have been able to find it, produce it? A. I will.

JOHN W. BUTTERFIELD.

Sworn to before me this 16 day of December 1899.

ALEX H. GALT,
Examiner-in-Chancery.

(Adjourned until Tuesday at 1 o'clock.)

WASHINGTON, D. C., *Dec. 18th*, 1899.

Met pursuant to adjournment.

Appearances: On behalf of the complainant, Charles C. Tucker Esquire; on behalf of the defendant, Arthur A. Birney Esquire.

Solicitor for the complainant here produces the assignment referred to in the testimony of the witnesses Cummings and Butterfield, which assignment is dated the 8th day of May, 1899 and purports to be signed by James B. Edmonds, a copy of which here follows:

"Know all men by these presents, that I, James B. Edmonds, of Washington, District of Columbia, the next of kin and sole heir at law of George B. Edmonds, deceased, in consideration of one dollar to me in hand paid, do hereby sell, assign and transfer all my right, title and interest in the personal estate of the said George B. Edmonds, to Horace S. Cummings of the city of Washington,
117 aforesaid, to have and hold the same for his use and behoof forever.

"In witness whereof I set my hand and seal this 8th day of May, 1899.

"(Signed) JAS. B. EDMONDS.

"Witness:
"LYDIA M. EDMONDS."

The solicitor for the complainant does not offer in evidence this assignment and will object to its being read on the trial upon the ground that it is wholly irrelevant and immaterial to the issues in this case. He simply produces it in pursuance of the notice heretofore given by the solicitor for the defendant for its production.

Counsel for the defendant here offers in evidence the said document so produced.

Counsel for the complainant objects to it as irrelevant, immaterial and incompetent.

It is agreed that the original of the foregoing document may be retained in the possession of the complainant and that the copy shall be read as though it were the original.

Counsel for the complainant here announced his case in chief closed.

(Adjourned).

ALEXANDER H. GALT,
Examiner-in-Chancery.

118 *Testimony on Behalf of Defendant.*

Filed May 24, 1900.

In the Supreme Court of the District of Columbia.

HORACE S. CUMMINGS, Complainant,
vs.
GILBERT S. MOYERS, Defendant.
} Equity. No. 20802.

WASHINGTON, D. C., *February* 15, 1900.

Met pursuant to notice at the office of Messrs. Birney & Woodard, Mertz building, Washington, D. C., on this day for the purpose of taking testimony in behalf of the defendant in the above-entitled cause.

Appearances: On behalf of the complainant, Charles Cowles Tucker, Esquire; on behalf of the defendant, Arthur A. Birney, Esquire.

JOHN C. SCOTT, a witness produced on the part of the defendant, having been first duly sworn testified as follows:

By Mr. BIRNEY:

Q. Please state your name, age and residence? A. John C. Scott, age 36; I am a letter-carrier.

Q. How long have you been a letter-carrier? A. Since July 7, 1896.

Q. Before that time were you ever in the employ of Col. Gilbert Moyers? A. Yes, sir.

Q. Between what dates? A. From about March 1887 until about January 1894.

Q. In what capacity? A. As clerk and stenographer.

119 Q. Where was his office at the time you first entered his employ? A. [illegible]305 E street.

Q. Was his office changed at any time during your stay with him? A. Yes, sir; it was changed from 1305 E St. to the Washington Loan and Trust building.

Q. About what time? A. In the latter part of 1891.

Q. Did he afterwards maintain his office in the Washington Loan and Trust building after you left him? A. He did.

Q. Did you know George B. Edmonds? A. Very well.

Q. Where did you see him, and under what circumstances during your employment by Col. Moyers? A. He was in Col. Moyers' office almost daily.

Q. Did you talk with him from time to time? A. Very often. In fact while I was writing on the type-writer he would sit there and talk with me a part of the time when I was not writing.

Q. (Handing witness a paper.) Look at the paper I now show you, marked Exhibit H. S. C. No. 1, A. H. Galt, examiner, in the complainant's testimony and say what you know about that paper—who wrote it and when you first saw it? A. This agreement was written in Col. Moyers' office and I am satisfied that I was the one who wrote it. It was dictated to me and, of course, I wrote it from my notes on the typewriter—the agreement between the two parties.

120 Q. Do you remember it? A. I do.

Q. Was that a single agreement or was it made in duplicate? A. I generally made all of my copies in duplicate. That was the instructions from the Colonel always.

Mr. BIRNEY: The duplicate of this agreement is not at present in the hands of counsel and the witness will be recalled to identify it.

Q. At the time that agreement was signed was there a schedule, or any other paper attached to it? A. No sir; a separate paper. Just the one type-written paper. This schedule was not on it.

Q. The schedule now attached to it was not with it? A. No, sir.

Q. Did you ever see that schedule before to-day? A. No, sir.

Q. Do you know the hand writing in which the schedule was made. A. The hand-writing is Mr. George B. Edmonds'.

Q. You were familiar with his hand-writing, were you? A. Yes, sir.

Q. During the time that Mr. Edmonds was thus visiting Col. Moyers' office what do you know of his getting any money from Col. Moyers? A. He would frequently, every few days, get money in different sums from Col. Moyers.

Q. When did that practice begin, how early, as far as you now recall? A. About a year, I should think, after I went in his office, something like that.

Q. And that occurred before the removal of the office to
121 the Washington Loan and Trust building? A. Yes sir; right along. While he was on E. St. he would come in there very often for money.

Q. What sums do you know of his having obtained? A. He would get sums ranging all the way from $5, $10, to $20 and $25, on up, and at one time I know he got in the neighborhood of $400 or $500.

Q. How frequently did he get those smaller sums? A. I should say about every three or four days.

Q. Did he have any other purpose in coming to the office than to get money; if so what was it? A. I know of no other purpose than to get money.

Q. What were your opportunities to see that he got money? A. He would come in there and ask the Colonel right in my presence for money. Sometimes he would ask me to go to the Colonel and get him money, and on three or four occasions I got money from the Colonel and gave it to him.

Q. Did you ever get money from the bank, at Col. Moyers' instance, to give to Mr. Edmonds? A. I did on two or three occasions. I know I got some from the bank on a check.

Q. Can you now recall the amounts you got from the bank on those occasions? A. No sir, I cannot say the exact amount.

Q. Do you know of Col. Moyers having expended money for Mr. Edmonds? A. Yes sir; I know one time Mr. Edmonds was sick and Col. Moyers having full charge of him, sent for the doctor. I went for the doctor myself. He paid all the doctor's bills and bought him his food and all.

122 Q. What doctor was it? A. Dr. Bulkley.

Q. Where was Mr. Edmonds living, do you know? A. On 12th and F streets, if I remember correctly. I know he did stop there, and I think he was there at that time, and sent down for the Colonel.

Mr. TUCKER: That is northwest?

The WITNESS: Yes sir; right above here.

Q. What do you know, if anything, of any settlement between Col. Moyers and Mr. Edmonds, of their business affairs. A. Mr. Edmonds told me himself very often that he had closed out all his business to Col. Moyers; had disposed of all of it, and he also told me after this large sum of money, between $400 and $500 was paid down here, that that settled the whole business; that the Colonel did not owe him any more money.

Q. Where was that payment made? A. In the Washington Loan and Trust building.

Q. About what time? A. It was some time in the spring or summer, to the best of my knowledge, of 1892.

Q. How do you fix the time? A. The only way that I can fix the time is that I know that the Colonel at that time was getting cases ready for me to go down in the Shenandoah valley to take testimony, and we started to fix them in the spring of 1892, and then we did not get ready to go that year; that testimony went over to the next year, and it was during that time that I was busy fixing these papers and abstracts that this money was paid.

123 Q. Tell us in detail just what you know of the payment of that sum that you speak of as a large sum, between $400 and $500? A. I know that when Mr. Edmonds came in he told the Col-

onel he wanted to go away for his health and he had to have some money in order to do so, and it would require a good deal, and I know they fixed up the matters there and the Colonel paid him this amount of money, and it was understood that that was the final settlement. Mr. Edmonds agreed to bring the agreement back and release the Colonel in writing from all obligations.

Q. What agreement was he to bring back? A. The agreement disposing of the cases, made in 1888.

Q. The paper that you have already referred to? A. This one, (referring to Exhibit 1).

Q. He was to bring that back and release him in writing? A. Yes, sir.

Q. Did he ever do that to your knowledge? A. Not to my knowledge. I did not see him.

Q. Up to that time did you ever have any conversation with Mr. Edmonds? A. Yes sir; I used to see him very often; in one conversation I said to him "I told you once, didn't I, that you need not be afraid of any money that was placed in Col. Moyers' hands; that you would be sure to get it." He said "I knew that; I knew that the Colonel would not keep a five cent piece that belonged to anybody else."

Q. After this final settlement did he get any more money?
124 A. Not to my knowledge. I do not know that he was ever in there after he got that. I never saw him around afterwards. The only time I ever saw him was on the street.

Q. You never saw him after he got that sum of $500? A. No, sir.

Q. Do you know whether or not Mr. Edmonds gave any receipts to Col. Moyers for money that he got from him from time to time? A. He gave some receipts.

Q. You would know them if you should see them? A. I would.

Mr. BIRNEY: I will exhibit the letter later.

Cross-examination.

By Mr. TUCKER:

Q. You are the same John C. Scott who made the affidavit on the 19th of September 1899, filed in this suit, are you not? A. Yes sir.

Q. At whose request did you make that affidavit? A. Colonel Moyers.

Q. By whom were you first approached for the purpose of getting you to sign this affidavit? A. I was sent for by Col. Moyers to come and see him.

Q. Who came to you? A. It seems to me it was a letter written, if I am not mistaken.

Q. Who brought the letter? A. The mail carrier, or rather it came through the mail office.

Q. Before seeing Col. Moyers in connection with the matter
125 had you a conversation with Mr. Ezra Nat. Hill? A. No, sir.

Q. Have you ever had any conversation with Mr. Ezra Nat. Hill in connection with this matter. A. Mr. Hill tried to get me into conversation at one time and I refused to do so.

Q. You refused at all times to talk with him concerning this case? A. I did—that is to go into any details with him. I simply told Mr. Hill that I knew about it, and that was all.

Q. Mr. Hill was not the man who came to you from Col. Moyers? A. No sir; not at the time that affidavit was made.

Q. When did Mr. Hill come to you? A. Once afterwards.

Q. Did he come from Col. Moyers? A. Not that I know of. If he did I did not know it.

Q. You say you saw Mr. George B. Edmonds in Col. Moyers' office almost daily? A. Yes, sir.

Q. When was that—between what dates? A. March 1887 to 1892—about the summer of 1892.

Q. From 1887 until the summer of 1892? A. Yes, sir.

Q. Do you know what brought Mr. Edmonds to Col. Moyers' office? A. Yes, sir.

Q. What was it? A. To get money.

126 Q. And for no other purpose? A. No, sir.

Q. Don't you know as a matter of fact that Col. Moyers and Mr. Edmonds were engaged together in the prosecution of claims before the Government? A. Together?

Q. Yes? A. No, sir. Mr. Edmonds disposed of his claims to Col. Moyers.

Q. Who drew up this agreement of 1888, you? A. Yes sir; I am satisfied that I did.

Q. Don't you know that from 1888 until 1892 Col. Moyers and Mr. Edmonds were engaged in the prosecution of claims together? A. No sir. Disposition had been made of the claims by Mr. Edmonds to Col. Moyers in 1888, and Mr. Edmonds would draw money from the Colonel under that disposition.

Q. You knew they were partners in the prosecution of those claims between 1888 and 1892? A. Not in partnership, to my knowledge.

Q. You drew up this agreement of 1888? A. I think that it was a general disposition of the business; there was no partnership.

Q. By the agreement of 1888? A. That is what I understood—the disposition of all the business.

Q. You understood that by the agreement of 1888 Mr. Edmonds disposed of all the claims to Col. Moyers? A. Yes, sir. Of course when we take notes and write them out on the typewriter we cannot always remember everything—keep it in our heads.

127 Q. Did you not look at this agreement to identify it a moment ago? A. I did.

Q. And you identified it as the agreement that you drew up? A. I said I wrote it.

Q. And you considered that to be an agreement by Mr. Edmonds to dispose of all these claims? A. Yes sir. I understood at the time that that was the general disposal of all the business.

Q. If that was the general disposal of the business what was the agreement of 1892? A. The agreement of 1892—there was no agreement. It was a final payment by Col. Moyers, between $400 and $500, to Mr. Edmonds in full payment of all claims that he transferred to him.

Q. What was the agreement of 1888 a disposal of? A. He had been drawing money from time to time and the Colonel had been giving him money whenever he would ask for it.

Q. So it was agreed in 1888 that Mr. Edmonds would sell all his interest in the claims to Col. Moyers and Col. Moyers did not pay for it until 1892? A. I did not say that. I said he paid for it right along.

Q. He had not completed his payments until 1892? A. No, sir. The final payment was made in 1892, when Mr. Edmonds said he wanted to go away for his health.

Q. Where was the schedule that was to be annexed to this agreement of 1888? A. I do not know anything about schedules.

128 Q. Don't you know that that agreement contained a recital that there is a schedule annexed to it? A. That may be true but the schedule is not annexed.

Q. And you never saw the schedule? A. No, sir.

Q. You never heard any mention of the schedule? A. No sir; I never saw the schedule at all.

Q. What became of this agreement after your transcribed it, whom did you give it to? A. I gave it back to my employer, of course.

Q. You gave it back to Col. Moyers? A. Yes sir and he and Mr. Edmonds transacted their business together.

Q. I wish you would put your memory to work and tell me all of the payments of money that you recall Col. Moyers making to Mr. Edmonds between 1888 and 1892? A. There were payments made at the rate, I should say, of every three or four days.

Q. Of how large a sum? A. Ranging from $5.00 up to $25.00.

Q. You say that every three or four days Mr. Edmonds got anywhere from $5.00 to $20.00 from Col. Moyers? A. I said from $5.00 to $25.00.

Q. He got from $5.00 to $25.00 every three or four days from 1888 until 1892? A. Yes, sir.

Q. Do you know whether Col. Moyers in or about 1891 collected any money on a claim or claims in which he and Mr. Ed-

129 monds were jointly interested? A. That I could not say.

Q. Do you know whether under the appropriation act of 1891 Col. Moyers received any moneys in claims in which he and Mr. Edmonds were jointly interested? A. I could not say whether there were any of these claims appropriated for at that time or not. I remember the appropriation bill very well—that is the general bill. I do not remember each claim that was in it.

Q. You know that Col. Moyers collected money under the appropriation bill of 1891? A. Yes, sir.

Q. With respect to these small payments of from $5.00 to $25.00 that were made by Col. Moyers to Mr. Edmonds every three or four days, I wish you would state if you know why those payments were made? Were they made on the score of charity or part payments? A. Part payments on the business that had been transferred to Col. Moyers.

Q. Part payments on the agreement of 1888? A. Yes, sir.

Q. They were not to be considered as charity? A. No, sir.

Q. Col. Moyers invariably took receipts for the sums paid, did he not? A. I won't say invariably. I know he took some receipts, but I won't say invariably.

Q. Did you ever write out any receipts? A. Not that I know of; I do not think I did.

130 Q. In the summer of 1892, so far as you could judge, what was Mr. Edmonds' condition mentally? A. He was as sound as you or I are to my knowledge.

Q. You are sure of that? A. Yes sir. I had many conversations with him and arguments on various subjects and I found him always very intelligent in his expression of views.

Q. Where did he live then? A. It seems to me he was up at 12th and F streets.

Q. Do you know his brother, James B. Edmonds, the ex-Commissioner of the District of Columbia? A. No, sir.

Q. You never heard him speak of him? A. No, sir. I have heard him spoken of, from general reputation.

Q. But you never heard George B. Edmonds speak of him? A. No, sir.

Q. Did you ever hear Mr. George B. Edmonds speak of Mr. Horace S. Cummings? A. No, sir.

Q. Did Mr. George B. Edmonds, between 1888 and 1892 have an office anywhere that you know of? A. No sir; not that I know of. He was still living up here at the corner, and would be around on the streets. I would see him on the streets most every time I saw him.

Q. Was he a drinking man? A. I never saw him take a drink in my life from the time I knew him.

Q. You say that in the summer of 1892 you saw Col. Moyers pay to Mr. George B. Edmonds between $400 and $500. A. Yes sir.

131 Q. Can you not fix more definitely the sum paid? A. No sir; I cannot. I know it was between those figures.

Q. How do you fix those figures? A. From the simple fact that I heard the amount mentioned but I could not say the amount exactly.

Q. Did you see the sum paid? A. Yes, sir; I saw it paid.

Q. Was it paid in cash or by check? A. It seems to me it was paid in cash.

Q. Did you draw the money for Col. Moyers from the bank to pay it? A. No sir; not at that time. It was before that that I drew some checks.

Q. You do not know where Col. Moyers got the $400 or $500? A. He got it out of his safe.

Q. He kept his money in his safe at that time did he? A. Some he would, and some he kept in the bank.

Q. Did he make a habit of keeping that amount of money in his safe? A. No sir; just before putting it in bank.

Q. And you do not know whether he drew that money from the bank, that $400 or $500? A. No, sir.

Q. You say you saw the money actually paid? A. Yes, sir.

Q. Did a receipt pass between the parties? A. To my knowledge there was no receipt as to the $400 or $500 but Mr. Edmonds
132 agreed to bring the agreement in and release Col. Moyers in writing as to all obligations on the claims.

Q. Didn't Col. Moyers at that time have a duplicate of the agreement? A. I do not know. If he did I do not know where it was.

Q. Nothing was said about this duplicate original that Col. Moyers had? A. No sir, but Mr. Edmonds agreed to bring his agreement in and release the Colonel of all obligations in writing.

Q. In other words he agreed to bring in the agreement of 1888 by which he had disposed of his claims to Col. Moyers and release him under that agreement? A. Release him in writing of all obligations.

Q. What was Mr. Edmonds' condition physically in the summer of 1892 when this payment was made? A. As to his general health? His health was not good.

Q. What was his mental condition? A. His mental condition was all right, so far as I could judge and see.

Q. At or since the time that you signed this affidavit on the 19th of September 1899, did you or have you stated to Mr. Ezra Nat. Hill that you knew at the time of the making of that affidavit that Edmonds was insane? A. No sir, I did not.

Q. Have you at any time since the making of that affidavit discussed with Mr. Hill the subject of Mr.——. A. (Interrupting.) No sir; I would not discuss any subject with Mr. Hill.

133 Mr. TUCKER: I had not finished my question.

The WITNESS: I thought you were through with the question.

Mr. TUCKER: You knew what the question was going to be?

The WITNESS: You asked me if I had discussed that or any other question with Mr. Hill.

Mr. TUCKER: When you interrupted the question you knew what the question was going to be?

The WITNESS: You had finished as far as I could see.

(By Mr. TUCKER:)

Q. I ask you again, Mr. Scott, and ask you not to reply to the question until it is concluded—have you at any time discussed with Mr. Ezra Nat Hill the subject of Mr. George B. Edmonds' insanity, between 1888 and 1892, or at any other time? A. No sir. I would not discuss any question with Mr. Hill.

Mr. BIRNEY: You may state why, if you wish.

The WITNESS: For the simple reason that I do not consider him a fit man to discuss a question with. He is unsafe and tricky.

Q. Did you know that he had made an affidavit at the same time that you had made your affidavit, and covering the same subject-matter? A. He told me he was going to make one.

Q. Who drew up this affidavit of the 19th of September 1899 that you signed, do you know? A. I wrote it myself.

Q. You wrote it in your hand-writing? A. Yes, sir.

134 Q. (Handing witness a paper.) The affidavit which I now show you is a copy of that? A. (Examining.) No sir. That affidavit—the whole thing was written out in my hand-writing and was put in type by the young lady in Col. Moyers' office.

Q. But as I show it to you now it is an exact transcript of your hand-writing? A. Yes, sir.

Q. Of the agreement that you wrote? A. The affidavit that I wrote, yes sir.

Q. Now let us understand each other. You wrote this affidavit out in your own hand-writing? A. I did.

Q. And this typewritten affidavit which I show you is an exact copy of what you wrote out yourself? A. Yes, sir.

Q. Do you remember whether at any time Mr. George B. Edmonds was confined in St. Elizabeth's asylum for the insane? A. Not that I know of. I never heard of it.

Q. Has Col. Moyers, or anyone on his behalf, intimated to you that you would be paid for this testimony? A. No, sir.

Q. You received no intimation from any source that you would be compensated in any way for your testimony in this case? A. No, sir; in no way shape or form.

Mr. TUCKER: That is all.

Mr. BIRNEY: I desire to state that I will recall this witness

135 later to identify some papers.

Mr. TUCKER: I reserve the right then of further cross examination.

JOHN C. SCOTT.

Subscribed and sworn to before me this 15th day of February, A. D. 1900.

ALEXANDER H. GALT,
Examiner-in-Chancery.

(At this point an adjournment was taken until to-morrow, Friday, February 16th, 1900 at 12:30 p. m.)

WASHINGTON, D. C., *February* 16, 1900.

Met pursuant to adjournment.

Appearances: On behalf of the complainant, Charles Cowles Tucker, Esquire; on behalf of the defendant, Arthur A. Birney, Esquire.

JOHN C. SCOTT, re-called for further direct examination.

By Mr. BIRNEY:

Q. I show you now five papers, fastened together, purporting to be receipts from George B. Edmonds to Col. Moyers and ask you if you know the hand-writing to those receipts? A. (Examin-
136 ing papers.) I do.

Q. Whose hand-writing is it? A. Mr. George B. Edmonds.

Q. Is the signature to them his? A. Yes, sir.

Mr. BIRNEY: I will describe these receipts and then offer them in evidence. They are receipts for money as follows: being money passing from Col. Moyers to George B. Edmonds: one for $50, dated May 19, 1892; one for $20, dated June 11, 1892; one for $25, dated June 18, 1892; one for $10, dated July 11, 1892 and one for $15, dated July 23, 1892.

(The papers referred to are marked Defendant's Exhibits J. C. S. 1, 2, 3, 4 and 5 respectively.)

Mr. BIRNEY: I desire to state that I have not the agreement mentioned in the proceedings of yesterday; the witness has not been able to find it, but I will agree that he may be recalled at a future time to identify it, when it is found.

By Mr. BIRNEY:

Q. After the time in 1892 when you witnessed the payment of the large sum of money, between $400 and $500 from Col. Moyers to Mr. Edmonds, did Mr. Edmonds at any time perform any service in any of the cases? A. No sir, he did not, not up to the time I left there.

Q. Are you aware whether any testimony had been taken in any of the cases prior to the time of that settlement? A. No, sir.
137 Q. What do you mean; that no testimony has been taken? A. None had been taken.

Cross-examination.

By Mr. TUCKER:

Q. Do you know anything of the circumstances under which any of these receipts were given? A. They were simply given for the receipt of money that was paid by Col. Moyers to Mr. Edmonds.

Q. Do these receipts represent any of the moneys that were paid, according to your previous testimony, on account of the sale by Mr.

Edmonds to Col. Moyers of his interest in these claims? A. It was money that Mr. Edmonds would ask the Colonel for from time to time.

Q. These receipts represent part of that money so paid? A. Yes, sir.

Q. I observe by the receipt dated July 23, 1892, which reads as follows: Received of G. Moyers fifteen dollars which I agree to pay two weeks from to-day." Signed Geo. B. Edmonds—that the money advanced on that day appeared to have been a loan. Why did you state that that was paid on account of this alleged sale? A. Well, that was the understanding that it was paid on account of the alleged sale.

Q. Notwithstanding the way the receipt reads you adhere to your statement that that was paid on account of the alleged sale? A. I do not know why he should make the receipt in that style.

138 Q. I observe by the receipt dated July 11, 1892, that Mr. Edmonds agreed to pay, or to re-pay, the $10.00 which was borrowed that day to Col. Moyers one week from the date of the receipt. Can you explain why the receipt read in that way? A. Just as I said in my previous answer.

Q. I observe by the receipt dated June 18, 1892, that Mr. Edmonds states "Received of G. Moyers twenty five dollars which I agree to put in a note when he lets me have what he says he can let me have." How do you explain the language of that receipt if the money was paid on account of this alleged sale? A. I cannot say anything about that. I do not know why he made his receipt in that manner. I always understood it was money paid on account of the sale. That was the only way I understood the matter all the way through. I know when Mr. Edmonds would come in and ask for different amounts of money he would make that remark.

Q. Don't you know that Mr. Edmonds frequently borrowed small sums from Col. Moyers, promising to pay those sums back? A. Not to my knowledge he did not.

Q. And you are satisfied that all those payments were made on account of this alleged sale, notwithstanding the language of the receipts? A. I am.

Q. I observe by the receipt of June 11, 1892, for $20, that Mr. Edmonds agreed to put the $20 received then in a note "with others that he has let me have at any time." Can you explain that language? A. The same answer. I can say no more.

139 Q. By the receipt dated May 19, 1892, Mr. Edmonds agrees to put the $50 then borrowed "in a note when he lets me have the balance." Can you explain that language? A. The same answer.

Q. When was this sum of $400 or $500 paid by Col. Moyers to Mr. Edmonds? A. To my knowledge it was in the summer of 1892.

Q. I have here a receipt dated July 23, 1892. Was it before or after that date? A. I could not say as to dates. I know it was in

the summer of 1892 but I could not say as to whether it was in June, July or August.

Q. And you do not know whether it was before or after the date of this receipt of July 23 1892? A. No sir, I do not know.

Q. You have already testified that after the payment of this $400 or $500, that so far as you know, Col. Moyers and Mr. Edmonds had no financial transaction? A. I did; so far as I know.

Q. So, therefore, the $400 or $500, so far as you know, was paid after the date of this receipt of July 22, 1892? A. Yes sir; so far as I know.

Q. Have you any way in which you can refresh your recollection as to when this $400 or $500 was paid? A. Well as I stated yesterday, I know it was in the summer of 1892 that it was paid from the fact that I was preparing abstracts in certain cases down in the Shenandoah valley in which I was to go down as commissioner.

Q. Was it before you went down there? A. I did not go that summer; we did not get the cases ready and the attorney from the department could not go. But it was during that time—during the time I was preparing this case that this money was paid.

140 I did not go until the year following, 1893, on account of not having been able to get the attorney from the department

Q. What sort of work were you doing in those cases? A. Commissioner's work; taking testimony.

Q. Can you name any of the cases? A. Well, you have me now. If I had my little book with me I could give you all of them.

Q. Can you refresh your memory from that book and fix the dates? A. I can from my little book that I have at home in my trunk. I can get the name of every case.

Q. By means of that little book can you refresh your memory as to the date that this money was paid? A. I do not know that I could do that for the simple reason that the memoranda on this little book where I have each case, were made in 1893 when I went down there, and as I took the testimony in the cases.

Q. Can we not refer to the records of the Court of Claims and ascertain when this testimony was taken by you? A. The books will show that.

Q. Where were you when this $400 or $500 was paid to Mr. Edmonds by Col. Moyers? A. Right in Col. Moyers' office.

Q. Where was that? A. In the Loan and Trust building.

Q. Do you remember the floor? A. The third floor.

Q. How many rooms did Col. Moyers have? A. Four.

Q. Which room did he occupy? A. The last room, from the hallway.

141 Q. Was the money paid in that room? A. To my knowledge, yes, sir. He had his desk in the center of the floor and my desk was in the window.

Q. Was your desk in that room of Col. Moyers'? A. It was, all

the time I was with him, in the Loan and Trust building. His desk was in the middle of the floor and mine was in the window.

JOHN C. SCOTT.

Subscribed and sworn to before me this 16th day of February, A. D. 1900.

ALEXANDER H. GALT,
Examiner-in-Chancery.

THOMAS DANT (colored), a witness produced on the part of the defendant, having been first duly sworn, testified as follows:

By Mr. BIRNEY:

Q. Where do you live? A. I live at 130 Pearce Street court between N. Capitol and First street-.

Q. What is your business? A. I ain't got no business now. I have been ruptured and can't work any.

Q. Do you know Col. Moyers? A. Yes, sir.

Q. Did you ever work for him? A. Yes, sir.

Q. When? A. I worked for him since 1872 until 1894, I
142 believe.

Q. Were you with him at his office at 1305 E street? A. Yes, sir.

Q. Did you afterwards go with him to the Loan and Trust building? A. I used to go over there frequently after I got so I could not work, and climb steps.

Q. Were you employed by him after he went to the Loan and Trust building or not? A. No, sir; just go occasionally to see him. I had met Mr. Edmonds many times.

Q. Did you know Mr. George B. Edmonds? A. Yes, sir.

Q. You met him while you were working for Col. Moyers? A. I met him down at 1305 E street, yes sir.

Q. While you were at 1305 E street did you ever see Col. Moyers give him any money? A. I have.

Q. How frequently? A. Well, I cannot exactly say how many times but sometimes he didn't get any and sometimes he did.

Q. Do you know how much he gave him at any time? A. I remember one time his getting $20.

Q. Did you have a talk with Mr. Edmonds after Col. Moyers had left 1305 E street in about the year 1892? A. I did at the corner of 12th and F streets.

Q. Please state just what that conversation was, what Mr. Edmonds told you? A. He was asking me if the Colonel was in town; I told him I didn't know, I thought the Colonel had gone
143 away. He said "Well, I have closed all my business with the Colonel; I made a final settlement."

Q. Was anything else said? A. He said, I think, "I am going away in a few days."

Q. Did he say anything more about it than that? A. No, sir. He bid me *bood*-bye. I was not very well myself and he was in kind of a hurry I believe to go some place. He stopped up here some place on F street.

Q. You mean he lived there? A. Yes, sir.

Cross-examination.

By Mr. TUCKER:

Q. Where was it that you had this conversation with Mr. Edmonds? A. At 12th and F streets.

Q. Is that where he lived? A. He lived up there somewhere on F St.

Q. Between what streets? A. Between 12th and 13th streets.

Q. Now, at the time of this conversation where was Col. Moyers' office? A. In the Loan and Trust building.

Q. How long had he been there? A. About a year.

Q. He went from E street to the Trust building? A. He went from 1305 E street to the Loan and Trust building.

Q. How came it that Mr. Edmonds told you about his business relations with Col. Moyers? A. Well, he knew me very
144 well; I have done a little business for Mr. Edmonds when he would come in the office sometimes.

Q. What sort of business? A. Go out and get lunch if he wanted it, or anything like that.

Q. Were you working for Col. Moyers at the time of this interview? A. No sir; I was not working for him in the Loan and Trust building but I was working down at 1305 E street.

Q. What sort of work did you do for him? A. I got the mail and cleaned up the office, and went to the departments and carried letters and things like that, to different places.

Q. At this interview I understand you that Mr. Edmonds told you that he had closed out all his business with Moyers? A. He told me he had closed up his business with Col. Moyers. Col. Moyers had closed up with him.

Q. He had made a *fine* settlement, did you say? A. He made a final settlement.

Q. Did he say how much he had received from Col. Moyers? A. He never told me that, no sir.

Q. Did he say what sort of business he had had with Col. Moyers that was settled? A. No, sir. I know it was transferring his business over to the Colonel.

Q. What sort of business was it he transferred? A. Claims.

Q. How did you know that? A. I was in office long enough to know it.

145 Q. Did Mr. Edmonds have a desk in Col. Moyers' office? A. No, sir; if he did I never saw it.

Q. Then how do you know what sort of business Mr. Edmonds

was doing? A. I would be in there when he would be in there making the agreement with the Colonel.

Q. What sort of an agreement? A. For a sale of his business out to the Colonel.

Q. Oh, you were present when some agreement was made between them to sell out to the Colonel? A. Just hearing them talking. I was doing my business; sometimes I would be copying off copies.

Q. What agreement did they make? A. I do not know exactly what agreements were made. I only know they were talking in that way.

Q. But you do not know what was said? A. No, sir.

Q. How do you know they were making an agreement by which Mr. Edmonds was to sell out? A. My ears were open to hear them speaking.

Q. Can't you tell us something that was said? A. I told you that Mr. Edmonds told me that he had closed out all of his business to the Colonel.

Q. I am referring now to the talk you overheard in Colonel Moyers' office. This other interview was at 12th and F street-. A. He was asking the Colonel often to buy his business out and the Col. asked him how much did he want for it, and then I had to go off somewhere else and didn't know what went on afterwards.

Q. That is all you heard. You did not hear any figures
146 mentioned? A. No, sir.

Q. How many times did Col. Moyers pay money to Mr. Edmonds in your presence? A. I do not know exactly but I know of his paying him $20 once in my presence.

Q. Was that in cash or by check? A. In cash I think.

Q. At the E Street office? A. Yes sir.

Q. Do you know whether Mr. Edmonds gave any receipt for it? A. I do not know sir.

Q Was that paid do you know, on account of any transfer or sale by Mr. Edmonds to Col. Moyers of the business? A. I could not tell that either.

Q. Do you know whether in 1891 or 1892 Col. Moyers collected any money on account of any claims in which he was interested with Mr. Edmonds? A. No, sir.

Q. What sort of looking man was Mr. Edmonds? A. He was a low set man not over heavy.

Q. How old a man apparently? A. I could not say exactly how old he was.

Q. Did he have a smooth face or beard? A. Smooth face—well, he didn't have exactly a smooth face; he had beard.

Q. Where was his beard? A. That I do not remember now, how his beard was.

147 Q. What color beard was it? A. Kind of grayish.

Q. Was he an old man, or a young man or a middle-aged man? A. He was not a young man.

Q. Was he an old man? A. He was a settled man, a middle-aged man.

Q. What was the condition of his health apparently in 1892, or when you had this conversation with him at 12th and F streets? A. He seemed to be in pretty good health.

Q. Was he pretty alert mentally—pretty quick mentally? A. Well, he was in a pretty good plight, yes sir.

Q. He would step along briskly? A. Yes, sir.

Q. He did not seem to be ailing in any way? A. Not as I know.

Q. He was perfectly clear in his talk with you? A. Yes, sir.

Q. How old are you? A. I am fifty-nine years old.

his
THOMAS x DANT.
mark.

Subscribed and sworn to before me this 16th day of February, A. D. 1900.

ALEXANDER H. GALT,
Examiner in Chancery.

(Adjourned until Monday next, February 19th, 1900 at 12:30 p. m.)

148 WASHINGTON, D. C., *February* 19, 1900.

Met pursuant to adjournment.

Appearances: On behalf of the complainant, Charles Tucker, Esquire; on behalf of the defendant, Arthur A. Birney, Esquire.

Whereupon, owing to the illness of the defendant, adjourned until Wednesday next, February 21, 1900, at 12:30 p. m.

ALEXANDER H. GALT, *Examiner.*

149 Filed May 24, 1900.

In the Supreme Court of the District of Columbia, Holding an Equity Court for said District.

CUMMINGS
vs.
MOYERS. } Equity. No. 20802.

Testimony for and on behalf of the defendant by me taken, signed, sealed, and this 24" day of May A. D. 1900, by me delivered to the clerk of the supreme court of the District of Columbia.

MASON N. RICHARDSON,
Examiner-in-Chancery.

Fee $150. not paid.
11 witnesses;
11 exhibits.

MASON N. RICHARDSON, *Examiner.*

150 In the Supreme Court of the District of Columbia, Holding an Equity Court for said District.

CUMMINGS *vs.* MOYERS. } Equity. No. 20802.

DISTRICT OF COLUMBIA, *To-wit:*

Be it remembered that at an examination of witnesses begun on the 21 day of February and continued from time to time until the 23rd day of May 1900, when the within depositions were taken, I, Mason N. Richardson, an examiner-in-chancery, did cause to be personally present, Ezra Nat Hill, Geo. W. Z. Black, Christopher N. Wilson, John C. Scott, Thomas J. Healy, V. B. Edwards, P. E. Dye, Cyrus Snyder, John C. Chaney, George W. Taylor, and Gilbert Moyers, Horace S. Cummings and John W. Butterfield;

And counsel for complainant had due and sufficient notice.

MASON N. RICHARDSON,
Examiner-in-Chancery.

151 WASHINGTON, D. C., *February* 21, 1900.

Met pursuant to adjournment.

Appearances: On behalf of the complainant, Charles Cowles Tucker, Esq.; on behalf of the defendant Arthur A. Birney, Esq.

EZRA NAT HILL, a witness produced on the part of the defendant having been first duly sworn, testified as follows:

By Mr. BIRNEY:

Q. Please state your age, residence and occupation? A. I am nearly 69 years old; residence Washington, D. C.; occupation, lawyer.

Q. In the prosecution of your business as a lawyer have you devoted yourself to business in the courts or claims before the departments? A. Claims before the departments.

Q. And in the Court of Claims? A. Yes sir; I have a license to practice in the Court of Claims and in the Supreme Court of the United States.

Q. Do you know Col. Gilbert Moyers? A. Yes, sir.

Q. How long have you known him? A. About thirty years.

Q. Have you during the past ten or twelve years had desk room in his office; if so, what room and where? A. I had desk room at 1305 E street, N. W. in Col. Moyers' office for several years; I cannot tell exactly the date but I know it was up to 1890 and previous to that time for some years.

152 Q. Did you go with him after his removal to the Washington Loan and Trust building? A. I did not.

Q. Did you know the late George B. Edmonds? A. Yes sir; I knew him only by meeting him in Col. Moyers' office.

Q. Did you become acquainted with him through his coming in there? A. I did.

Q. Won't you tell us what you know of the payment by Col. Moyers to Mr. Edmonds of money from time to time? A. I saw Col. Moyers pay Mr. Edmonds money at various times in the office of 1305 E. street, and usually I think Mr. Edmonds gave a receipt for it.

Q. Did you know what it was for? A. I did not.

Q. Did you hear any conversation between them about it, or did Mr. Edmonds tell you anything about it? A. Well, Mr. Edmonds never told me anything about it. Col. Moyers said it was——

Mr. TUCKER: I object to anything that Col. Moyers may have said.

Q. Was it said in Mr. Edmonds' presence by Col. Moyers? A. I could not testify positively as to that; it might have been in Mr. Edmonds's presence, and might not.

Q. Can you refresh your recollection sufficiently to state? A. I do not know, sir; it might have been, and probably was, in Mr. Edmonds's presence because I had my *my* desk—the office was
153 not as large as this room—I had my desk in it; Col. Moyers occupied another. I was in this corner (indicating) and he was in that over there, and it might have been in Mr. Edmonds's presence but I cannot say positively.

Q. What amount of money did you know Col. Moyers to pay Mr. Edmonds? A. Well, I could not testify as to that. I know that at different times he paid Mr. Edmonds different sums of money at the office there; I saw the money pass between the two parties.

Q. Did you visit Col. Moyers' office after he removed to the Washington Loan and Trust building? A. Almost every day.

Q. You may state whether you saw any money paid by Col. Moyers to Mr. Edmonds at his office in the Washington Loan and Trust building? A. I never but once saw any money paid after he went to the Washington Loan and Trust building.

Q. How much did you see paid then? A. I saw $500 paid.

Q. Do you recollect any of the circumstances surrounding that payment—any statement that was made by the parties, or either of them, at the time? A. I was present when money was paid. Col. Moyers had four rooms there in the Washington Loan and Trust building and the largest room was the one that he occupied himself, and I was in there when the money was paid; I saw him pay it; there was some conversation. You must understand that it was a matter in which I had no personal interest at all and I paid no particular attention to the conversation. I remember this, that after the
154 money was paid Col. Moyers made a statement to me—if that can be admitted as testimony.

Mr. TUCKER: I object to it.

The WITNESS: I do not know whether Mr. Edmonds was present or not when he made it.

Mr. TUCKER: I object to it.

Q. How soon after the payment? A. Immediately after the payment and Col. Moyers said——

Mr. TUCKER: I object.

The WITNESS: Immediately after that payment——

Mr. TUCKER: I object to the statement made by Col. Moyers as the witness has said that he is not positive that Mr. Edmonds was present at the time.

The WITNESS: I cannot positively say that Mr. Edmonds was present. Col. Moyers said that he had bought Mr. Edmonds's business entirely.

Mr. TUCKER: I renew my objection to this last statement of the witness and shall ask at the hearing that it be stricken out on the ground that the witness is not positive that Mr. Edmonds was present at the time the alleged statement was made by Col. Moyers.

The WITNESS: I do not say that he was not present; he might have been.

(By Mr. BIRNEY:)

Q. What if anything did you hear Mr. Edmonds say about bringing in any paper or receipt or release? A. I heard Mr. Edmonds say that he would bring all the papers to Col. Moyers; I heard that very distinctly.

Q. Was that at the time of the payment? A. At the time of that payment.

155 Q. Did you know from those parties at that time how they were interested, and what they were interested in? A. Yes sir; because I had read an agreement between the parties made in 1888, I think; I cannot be positive as to dates—as to a partnership agreement by which Col. Moyers was to take charge of Mr. Edmonds' business. I know that Col. Moyers had agreed to take charge of Mr. Edmonds's business and conduct it for him. I knew that in 1888, when I was in the office with Col. Moyers.

Q. State whether in the conversation at the time of the payment of the $500 by Col. Moyers to Mr. Edmonds there was anything which directed your attention toward this agreement? A. I cannot recollect. You must understand that it is a long time ago.

Q. Did you know of any other business affairs between them? A. I did not.

Q. You have stated that before that time you had frequently seen Mr. Edmonds in Col. Moyers' office? A. Very often, at 1305 E street; I frequently saw Mr. Edmonds there.

Q. After that did you frequently visit Col. Moyers' office in the Loan and Trust building? A. I was in Col. Moyers' office two or three or four times every week.

Q. Did you ever see Mr. Edmonds there after this payment of the $500? A. I did not.

Q. Did you know the nature of these claims? A. I do not know that I knew; I supposed they were the ordinary claims
156 against the Government for depredations in the South, such as Col. Moyers was conducting, and such as I was conducting.

Q. Those were known as claims under the Bowman act Congressional cases, as they were termed among the agents? A. Yes sir, that is what I supposed they were.

Q. And they were to be prosecuted first in the Court of Claims, were they not? A. Yes, sir.

Q. And after that were to wait for the action of Congress in making appropriation? A. Yes, sir. That was the only kind of claims I knew anything about.

Q. State whether at that time the ultimate collection of those claims was, among lawyers practicing in the Court of Claims like yourself, considered probable or improbable, or certain or uncertain.

Mr. TUCKER: I object to the question on the ground, first, that the witness has not shown himself to be familiar with the character or nature of the claims which Mr. Edmonds and Col. Moyers were engaged in prosecuting and, secondly, because of the fact that the question calls for an expression of an expert opinion upon a subject which does not properly come within the province of expert testimony, and thirdly, because the witness has not qualified himself as an expert upon such subjects, if the subject matter of the question be the subject of expert testimony.

A. In the first place, I will answer the last objection. I was one of a committee of five or seven—I think seven—of the Court of Claims bar which prepared the Bowman act, so that I think I have some right to speak as an expert on that subject, as I was one of the committee.

157 Q. After the passage of the act did you prosecute claims under it? A. I had a great number of claims but I turned them over to one or two parties, either to Col. Moyers or to the firm of Pennybaker & Sons. I never went into the Court of Claims myself though I was licensed in the Supreme Court of the United States and the Court of Claims; I did not go there because I am not much of a court lawyer.

Q. Except for appearing in the court did you continue to collect these claims and prosecute them, and aid in the prosecution? A. Yes sir, and I am continuing now.

Q. Now answer my question of a moment ago as to the uncertainties and the like of those claims.

Mr. TUCKER: The same objection.

A. The Bowman act had been in force for three or four Congresses—that is six or eight years—and there had never been any appropriation made; every one of the gentlemen interested in the prosecution of those claims had used all the endeavors that it was possible for them to use to get bills through, and we have always failed, so that at that time in 1890 (I had one claim of my own, permit me to say, allowed for $54,875, and it had been allowed eight years, and we never got any appropriation through for anything until the 51st Congress, I think it was—the one that Tom Reed was Speaker of when it got through, and Tom Reed had not been elected Speaker then).

Mr. TUCKER: I object to this last statement relative to any claim of the witness on the ground that it is not responsive to the question and is irrelevant and impertinent.

158 The WITNESS: I am a tolerably good lawyer and know how to answer a question to suit myself, so I pay no attention to the objection.

Mr. TUCKER: These objections are for the court and not for you; entirely for the court.

The WITNESS: I understand; but they do not amount to anything either; I understand that. At that time the claims were not considered at all valuable; I will state that, because there had been no appropriation for eight years after the bill passed.

Q. When was the Bowman act passed? A. About 1882 I think, though I am not positive the records will show that. I know that I spent a great deal of time in trying to get it passed for two years.

Cross-examination.

By Mr. TUCKER:

Q. Do I understand you to say that at the time of this transaction between Mr. Edmonds and Col. Moyers there had been no appropriation for the payment of the Bowman Act claims for eight years? A. I think that is about the time; I did not state it positively as eight years; from the time of the passage of the Bowman act there had been no appropriation at all and there had been no claims paid at all.

Q. What was the date of the Bowman act? A. I stated just now that I thought it was about 1882 or 1883. That is a matter that can be easily determined.

Q. Don't you know that appropriations were made in 1891

159 to pay those claims? A. Of course I do.

Q. Don't you know that appropriations were made in 1891 to pay claims in which Mr. Edmonds and Col. Moyers were jointly interested? A. I do not know anything about Mr. Edmonds' claims: I know that appropriations were made to pay claims in which Col. Moyers was interested.

Q. You know that Col. Moyers received fees from claims that were paid under appropriations made in 1891, do you not? A. certainly.

Q. Do you know whether he paid Mr. Edmonds his share of the fees in the claims that were appropriated for in 1891? A. I never saw Mr. Edmonds after the payment of the $500 to him in Col. Moyers' office, and I never saw him anywhere else except in Col. Moyers' office in my life.

Q. When was this payment of $500 made? A. I would not like to say. It was after Col. Moyers moved to the Washington Loan and Trust building; if it had been before that time I could have told the date very nearly but it was after he moved to the Loan and Trust building, and I cannot tell the date.

Q. Was it before or after the appropriation of 1891 to pay claims of this character? A. That I cannot say. I do not know.

The WITNESS: I do not feel very well. I honestly think that it would be better if we could adjourn now. I feel almost like fainting.

160 (At this point, owing to the illness of the witness, the session was adjourned until Monday next February 26th, at 12:30 p. m.)

EZRA NAT HILL.

Subscribed and sworn to before me this 21 day of February, 1900.

MASON N. RICHARDSON, *Examiner.*

EZRA NAT. HILL, a witness heretofore sworn being recalled for cross-examination, testified as follows:

By Mr. TUCKER:

Q. How long was it after Col. Moyers moved to the Washington Loan and Trust building, that you saw him pay $500.00 to Mr. Edmonds? If you cannot fix the time accurately, give your best recollection. A. I cannot say positively. It may have been anywhere between two weeks and two months. It was not very long after he moved to these offices in the summer of 1891 or 1892.

Q. At the time the money was paid where were you in the room where it was paid, where was Col. Moyers and where was Mr. Edmonds? A. I was in the room when it was paid. In Col. Moyers' own room, they were sitting near the safe in the first part of the room and I was at the back window.

Q. Was there anybody in the room other than you, Col. Moyers and Mr. Edmonds? If so, who was the person or persons?

161 A. There was one, if not more, in the room. I do not remember who they were.

Q. Was the money paid in cash or by check, and if you state it was in cash please state how you know the sum paid was $500.00?

A. The money was paid in cash. I heard one of the parties say, it was $500. I don't know which.

Q. If you state the money was paid in cash, please state the denominations of the bills paid? A. I do not know what the denominations of the bills were. I did not examine them.

Q. Did Col. Moyers have the money so paid in his pocket or did he take it from his safe? A. I don't remember. I think from the safe.

Q. Did Mr. Edmonds give a receipt to Col. Moyers for the money so paid? A. I don't know. I only know money was paid and heard the amount stated.

Q. After Col. Moyers removed from his former office 1305 E St. N. W., to the Washington Loan & Trust building, did you have a desk in Col. Moyers' office in the latter building? A. I did not and the statement in my original affidavit to that effect was a mistake made by the typewriter who copied the affidavit which I did not read carefully before signing, supposing that what I had written was properly copied.

Q. Did you in the summer of 1892 see Col. Moyers give $500.00 to Mr. Edmonds in full settlement for the claims in which those gentlemen were jointly interested under their agreement of 1888,
162 or in full settlement for Mr. Edmonds' interest in any other claims in which Col. Moyers was also interested? A. I think I have already stated that I know very little of the business relations between Col. Moyers and Mr. Edmonds and do not know what any money paid Edmonds was for.

Q. How long and how intimately had you known Mr. Edmonds prior to the time you say you saw Col. Moyers pay him this $500.00? A. I never to my knowledge saw Mr. Edmonds except at Moyers' office and never spoke to him except at the office.

Q. At the time you saw this payment of $500.00 made, what can you say with reference to the mental condition of Mr. Edmonds? A. I always thought him a crazy man.

Q. If in reply to the last preceding question you state that in your opinion Mr. Edmonds was then insane, please state upon what this opinion is based?

Mr. BIRNEY: Objected to by counsel for defendant as not relevant to any inquiry made on the examination in chief and therefore incompetent.

A. His manner, his general appearance, the way he talked, his mode of seating himself bowed over with his head in his hands, and his walk.

Q. Are you acquainted with Mr. John C. Scott, now a letter carrier and formerly in the employ of Col. Moyers? A. Yes. I knew him as a clerk in Col. Moyers' office.

Q. If you state you are acquainted with Mr. Scott, please
163 state what, if anything, Mr. Scott has ever said to you with reference to his knowing that Mr. Edmonds was insane,

either at the time of the payment of the $500.00 in question, or at any other time.

Mr. BIRNEY: Objected to by counsel for defendant as incompetent and irrelevant. No foundation was laid for the inquiry in the examination of Mr. Scott.

A. I went to Mr. Scott, at the request of Moyers, to have him make the affidavit filed with mine in this suit and found him at the city post office. When I told him about my business Scott said "What that crazy fool?"

Q. Did you ever go to see Mr. John C. Scott at Col. Moyers' request to ascertain what Mr. Scott knew about this payment of $500.00 and if you did, what did Mr. Scott say to you with reference to his knowledge of such payment?

Mr. BIRNEY: Objected to as incompetent by counsel for defendant. The question calls for hearsay testimony.

A. Yes, after the first visit, I went at Col. Moyers' request again to see Scott and to find out whether he saw this payment made. Scott came to my office in answer to a note. I talked the matter over with him and he said he remembered the payment of $500.00 but did not know what it was for.

Q. Please state whether Col. Moyers, the defendant in this suit, on December 7th, 1899, at his office or at any other time and place told you he wanted some one to swear that Edmonds said he had sold his business to him, Col. Moyers? A. Col. Moyers said in his office that he wanted to employ me in this case and would pay me a good fee. I agreed to accept employment and then Moyers told me he wanted some one to swear that Edmonds said he
164 had sold his business to Moyers—asked me if I would find such a person. I suggested Scott and Tom Dent, his colored janitor, as the most probable persons to have heard such a thing.

Q. If you state that Col. Moyers so told you, state whether you at such time and place or at any time and place told him that Mr. Scott would do this, and if you state that you made such statement to Col. Moyers, state whether or not in response thereto Col. Moyers asked you to see Scott, and state whether you did see Scott and whether Scott told you he would do so? A. Col. Moyers asked me to see both parties. I saw Scott and he said he would see to it. I gave Dent's address to Moyers.

Q. Please state whether or not Scott, when you saw him, if you did see him, after your last mentioned conversation with Col. Moyers, if you had such a conversation, told you when you saw him, Scott, that he Scott wanted $5.00 or any other amount of money?

Mr. BIRNEY: Objected to by counsel for defendant as calling for incompetent testimony, if offered to impeach Mr. Scott as no foundation was laid for it.

A. Scott came to my office and said he wanted $5.00 I told him I would try and get it for him and told Col. Moyers. Don't know whether he received it or not.

Q. Did you thereafter see Col. Moyers and tell him Scott would swear that Edmonds told him, Scott, that he, Edmonds, had sold all his business to Col. Moyers? A. Yes.

Q. State whether or not at said last mentioned conversation with Col. Moyers, if you had such a conversation with him, or at any other time, Col. Moyers told you that you must try and get
165 one not in his employ to swear he heard this and that he, Col. Moyers, would pay $20.00 for it; and if you state that Col. Moyers so told you, state whether or not you told him you would do so?

Mr. BIRNEY: Objected to by counsel for defendant as matter not called for by any inquiry on direct examination and therefore incompetent.

A. Yes, Col. Moyers told me he wanted some one outside of his office to swear that he had heard Edwards say that he (Edmonds) had sold his business to Moyers, and that he would pay such witness. Moyers asked me if I could get such witness and I said I could, but had no intention of doing so, as I did not engage myself to do that kind of work for Moyers.

EZRA NAT. HILL.

Subscribed and sworn to before me this 15th day of May, 1900.

MASON N. RICHARDSON, *Examiner.*

WASHINGTON, D. C., *March 7th*, 1900—2 o'clock p. m.

Met pursuant to adjournment at the law offices of Messrs. Birney and Woodward, Mertz building, 11th and F Sts. N. W., to take further testimony for and on behalf of the defendant.

Present: Mr. Tucker for complainant; Mr. Birney for defendant; Mr. Richardson, examiner.

Whereupón CHRISTOPHER N. WILSON, a witness of lawful
166 age being by me first duly sworn according to law for and on behalf of the defendant, testified as follows:

By Mr. BIRNEY:

Q. Please give your full name, age and occupation? A. Chistopher N. Wilson, age sixty years, occupation clerk.

Q. Where have you been employed as clerk and for how long have you been employed? A. I am at present employed in Col. Moyers' office and have been for the past year.

Q. Do you know Mr. Butterfield, the gentleman now present? A. Yes sir.

Q. Were you present at an interview between Mr. Butterfield and Col. Gilbert Moyers' during last summer? A. Several times when they had interviews.

Q. Did you hear the conversation that passed between them at any of those interviews? A. Fragments of it, sir. I never paid particular attention to it except some special instance called it to my attention.

Q. Did anything occur at one of those interviews to attract your attention particularly to what was said? A. At one time Mr. Butterfield was there and there seemed to be a rather heated argument over certain matters.

Q. What was said between them? A. I understood Col. Moyers' to say—it was in relation to the payment of some money to a Mr. Cummings, I think it was. I heard him say that he paid him $500, at one time and various other sums.

167 Q. Did you mean to say that was Mr. Cummings or Mr. Edmonds to whom he paid that money? A. I do not know. It is the gentleman that Mr. Butterfield was representing. It was Mr. Edmunds I think. I would not be positive of that. In fact, I would not recall that had not Col. Moyers spoken very loudly and seemed to be angry.

Q. What did you hear Col. Moyers say if anything, about the contract between him and Mr. Edmunds?

Mr. TUCKER: Objected to on the ground that the declarations of Col. Moyers are incompetent.

A. I heard him say that he thought that he paid him—he thought that he did not owe him any money when he came to straighten up his books and look over his accounts.

Q. Look at the paper which I now show you and say whether you have seen it before and if so, where? A. I have seen that paper repeatedly, sir.

Q. Where? A. It was with a bunch of other contracts that Col. Moyers keeps together—the contracts of his cases—probably he has three or four hundred contracts in the bunch in which that contract was.

Q. And where did he keep this in the office? A. He kept that in his own safe in the front room—that is at times—and at times I had charge of the papers, and I kept them in the safe that I have in the middle room.

Q. Did you ever see any other paper or schedule of any or anything of the kind attached to this? A. No, sir.

Q. Do you know the signature of Gilbert Moyers to that?

168 A. Oh, yes, sir, that is his signature.

Mr. BIRNEY: That is offered in evidence. Ex. M. N. R. 1.

Cross-examination.

By Mr. TUCKER:

Q. Mr. Wilson, as I understand it, these two papers pinned together were seen by you at various times in a package of contracts in Mr. Moyers' safe? A. Yes, sir.

Q. What sort of contracts were these which were included in this package? A. Contracts for the collection and prosecution of claims under the Bowman and Tucker acts. That is the only class of cases which Col. Moyers prosecutes as a general thing.

Q. This was in a package then of contracts in which were reserved Mr. Moyers' rights as to fees? A. As to fees, yes, sir.

Q. And these two papers were frequently seen by you in a package containing a number of other contracts relating to fees? A. Yes, sir.

Q. In this conversation between Mr. Butterfield and Col. Moyers did Mr. Moyers say that if from an examination of his books he found anything to be due the estate of Mr. Edmunds he would pay it? A. I am not aware he said — in as many words as that.

Q. Well, was that the substance of it? A. That was about the substance of it. Of course, I would not have paid any par-
169 ticular attention to this conversation at all had it not been for Col. Moyers getting a little angry.

Q. Did Col. Moyers fix any time when he would state the account? A. No sir, not that I am aware of.

Q. Did he tell Mr. Butterfield, that he, Col. Moyers, was not feeling well or ill at the time, but that he would attend to it at some future time? A. No, sir, he may have had a conversation of that kind, but if so I do not recall it. I only recall this particular instance that I have related about the five hundred dollar incident because the Colonel got very loud and very angry and spoke very angry to Mr. Butterfield. Mr. Butterfield had not been to the office often, and before then he was frequently at his office at New York avenue and 17th street and always seemed to get along very fairly until that interview.

Q. At that interview I believe Col. Moyers said that an agreement which Mr. Butterfield had in his possession was a forgery? A. There was something of that kind. I think it was either a forgery or it was not genuine. I know that there was a dispute about a certain agreement.

Q. Well, did Col. Moyers say that because that agreement was a forgery that he would not pay Mr. Edmunds anything? A. No, sir. I did not get the full gist of the remarks because I was in the room adjoining. I was not in the same room where this conversation occurred. I was probably twelve feet away from Col. Moyers' desk. Col. Moyers sat facing me. In other words, I was in
170 the next room—I guess I was in the next room to his room—but I could look in at all times and see what was going on.

CHRISTOPHER N. WILSON.

Subscribed and signed by me by consent and agreement of counsel this 7 day of March, 1900.

MASON N. RICHARDSON, *Examiner.*

Hereupon the further taking of testimony in this cause was adjourned until Saturday March 10th, 1900, at the hour of 2 o'clock p. m.

MASON N. RICHARDSON, *Examiner.*

WASHINGTON, D. C., *March* 10, 1900—2 o'clock p. m.

Met pursuant to adjournment at the law offices of Messrs. Birney and Woodward, Mertz building, to take further testimony for and on behalf of the defendant.

Present: Charles C. Tucker, Esq., for complainant; A. A. Birney, Esq., for the defendant; examiner, parties and witness.

Whereupon JOHN C. SCOTT, a witness heretofore sworn was recalled for further examination.

171 By Mr. BIRNEY:

Q. What is your name? A. John C. Scott.

Q. Mr. Scott, look at the paper which I now show you, being Exhibit No. M. N. R. No. 1 and say what you know, if anything, of that paper and by whom it was written?

(Counsel hereupon hands witness an agreement.)

A. Both papers?

Q. Speak of the typewritten paper first. A. The typewritten paper is a duplicate of an agreement I testified to in the first examination or second examination I don't know which.

Q. Written by whom? A. Written by me. It is a duplicate copy of the one I wrote. This manuscript is in Edmunds' handwriting and this was an agreement drawn up by Mr. Edmonds. The Colonel dictated this one in typewriting to me.

Cross-examination.

By Mr. TUCKER:

Q. In whose handwriting is the interlineation in this typewritten agreement? A. That I do not know. I do not know whose handwriting that is in.

Q. All you prepared was the typewritten portion of it? A. Yes, sir, the typewritten portion of it.

Q. Do you know anything about the schedule mentioned in that agreement? A. I never knew of any schedule until the day I saw it in this office when I testified before.

Hereupon the witness desiring to make some corrections in
172 the typewritten report of his former testimony made the following statement:

WITNESS: The typewritten report of my testimony taken stenographically on the 15th and 16th days of February and before I sign the same wish to make two corrections therein. On page four I was asked the following question:

Q. How frequently did he get those smaller sums? I am reported as answering: A. I should say about every three or four days. But I meant to say and think I did say: I should say he was in the office about every three or four days.

On page 11 I am made to say or reported as having testified: "He had been drawing money from time to time and the Colonel had been giving him money whenever he would ask for it." But what I meant to say was that the Colonel had been giving him money nearly every time when he would ask for it.

JOHN C. SCOTT.

Subscribed and signed by me this 10 day of March 1900, for the witness by consent and agreement of counsel.

MASON N. RICHARDSON, *Examiner.*

Hereupon the further taking of testimony in this cause was adjourned until March 12th, 1900, at the hour of 2 o'clock p. m.

MASON N. RICHARDSON, *Examiner.*

173 WASHINGTON, D. C., *March 12th*, 1900—2 o'clock p. m.

Met pursuant to adjournment at the law offices of Messrs. Birney and Woodward, Mertz building, to take further testimony for and on behalf of the defendant.

Present: Mr. Tucker for the complainant; Mr. Birney, for the defendant; the respective parties; examiner and witnesses.

Whereupon THOMAS J. HEALY, a witness of lawful age being first duly sworn according to law for and on behalf of the defendant, testified as follows:

By Mr. BIRNEY:

Q. Please state your age, residence, occupation, Mr. Healy. A. I am forty-nine years old, I believe.

Q. And your residence? A. Jessup, Maryland.

Q. And your occupation? A. Farmer at present.

Q. How long were you or have you been living at Jessup? A. I have lived there off and on since 1880, I think.

Q. Were you ever in the employ of Col. Gilbert Moyers? A. I was.

Q. During what years? A. From 1885 up to say 1892.

174 Q. What time in 1892 did you leave him? A. I think it was some time in August or September to the best of my knowledge now.

Q. Have you any way of fixing that time better, Mr. Healy? A. Well, now, let me see. To a certainty I considered myself out of the office in fact a couple of months before. I did just report.

Q. Please explain what you mean by that? A. Well, I sort of got tired and wanted to go back home. I got tired of Washington work—that kind of work and I just quietly went out.

Q. Then you did not attend upon the office regularly after that? A. After that it was sort of an indifferent manner.

Q. During the last two months? A. Yes, sir. He had three other clerks there—two others I believe.

Q. What was your occupation with Col. Moyers? A. Well, I used to attend to the Congressional matters. I just considered myself a long time a general utility man around Congress and the office.

Q. Did you know George B. Edmonds in his life time? A. Yes, sir. I knew him well.

Q. How long did you know him? A. Well, I knew him probably a couple of years before he came around the office.

Q. When did he begin coming around the office? A. I think it was sometime in 1888.

Q. You knew him a couple of years before? A. Yes sir, occasionally I would see him around Congress there.

175 Q. Do you know anything of a contract made between Col. Moyers and him in 1888? A. Well, I think there was a contract of some kind in regard to some Congressional acts.

Q. You knew of it only in a general way? A. Yes, sir.

Q. Please state what knowledge you have of any payments of money made by Col. Moyers to Mr. Edwards? A. Well, I can only say this, that at times when Edmonds would come in here—whenever he came into the office he always came and generally asked me if Colonel had any money because he knew that I knew because I attended to the safe and if I told him yes, why then he would go in and see the Colonel and the Colonel then came to his door and said "Tom let him have $25." or whatever it was, for Mr. Edmonds. I would go to the safe and take it out and take it to Mr. Moyers' room and lay it down on his desk and go back to my seat.

Q. How frequently did that happen—would an occurrence of that kind happen? A. Well, I cannot tell just exactly the number of times but it was very frequently because he had told me that——

Mr. TUCKER: Who told you?

WITNESS (continuing): Mr. Edmonds had told me that he had nothing to live on.

Q. Had he said anything to you about how much or how little he depended upon this money from Col. Moyers? A. I think only in a general way. From what he said he was depending upon that to pay his board in fact.

176 Q. Where was he living then? A. Well I think somewhere on the Avenue.

Q. Did you ever go to his quarters to see how he lived? A. I don't think I ever did.

Q. How long to your knowledge did these advances of money by Col. Moyers to Mr. Edmonds continue in relation I mean to the time you left the office? A. Well, I would say very frequently. Of course, he may have come in there while I was out. Of course, I cannot give the time. I never kept any record. I usually kept a record when I paid myself. When I handed it to Col. Moyers I kept no record and therefore I cannot say.

Q. Did these payments continue from time to time up to the time you left the office? A. Pretty much, yes, sir.

Q. Mr. Healy, did you know the general nature of the claims in which Mr. Edmonds was interested with Col. Moyers? A. Yes, sir. I was very familiar with those cases.

Q. You mean all the cases of that class? A. Yes, sir.

Q. What were they called? A. They were the Southern Claims Commission cases.

Q. Please state what you know of the history of those cases?

Mr. TUCKER: I object to that as immaterial and irrelevant and as not the subject of expert testimony. Also on the ground that if they are the subject of expert testimony the witness has not qualified himself to speak as an expert.

177 Q. Go ahead and state what you know. A. Well, they were cases disallowed by the Southern Claims Commission and reported to Congress disallowed.

Q. How far back was this disallowance? A. Well, probably from the first disallowance in 1872 up to 1880.

Q. Go on. How then did they become revived? A. Well, under the act of March 3, 1887. I think it was called the Bowman act.

Q. 1887 or 1883? A. Yes sir, certain section of the Bowman act. They were by request of the attorneys referred to the Court of Claims.

Q. What force and effect did the findings of the Court of Claims have in those cases?

Mr. TUCKER: Same objection.

A. Well, that was a question for members of Congress to decide. They did pass a bill in 1891 I believe, after eight years of labor.

Q. I thought you said inadvertently 1887. The bill was passed in 1883? A. Yes, sir, March 3, 1883. That was the Bowman act.

Q. Under that act and in that class of cases did the Court of Claims enter judgment upon determining them or simply report to Congress their findings?

Mr. TUCKER: Same objection and I object to that on the further

ground that the best evidence are the records and findings of the Court of Claims.

A. They only reported the facts to Congress.

Q. You were with Col. Moyers at the time of the first appropriation for the payment of such claims in 1891, were you? A. Yes, sir.

178 Q. State if you please, whether in any of the appropriations made in that year Mr. Edmonds was interested or claimed to have an interest? A. Why to the best of my knowledge he had no interest whatever in that appropriation.

Q. Did you ever hear him say anything to the contrary? A. I never heard him say anything to the contrary.

Q. Now, Mr. Healy, you said that these cases were originally before the Southern Claims Commission. Do you know how Mr. Edmonds obtained his information as to those rejected cases. Who, if you know, had lists of those cases.

Mr. TUCKER: Objected to as irrelevant, incompetent and immaterial.

A. Well, we had a printed list in the office of the disallowed claims with the reports from 1871 to 1880, I think, and it was customary for Mr. Edmonds to go over and examine the disallowed report and the list. The list was by States and counties.

Q. What was the form of that list. Book form or otherwise?

Mr. TUCKER: Same objection.

A. Book form.

Q. Book form? A. Yes sir, printed by the Government Printing Office.

Q. To what extent did you observe Mr. Edmonds studying that list or taking a memorandum from it?

Mr. TUCKER: Same objection.

A. Well, he had it examining the list very much all the time when he was in there.

179 Q. Do you know whether he had a list of that sort of his own? A. No, sir.

Q. From anything he said? A. He could not possibly have had one. If he had he would not have come in the office, I don't think, to examine that one.

Q. Have you had any business relations or have you had any employment with Col. Moyers since you left his place in 1892? A. None whatever.

Q. Mr. Healy, are you familiar with the signature of Col. Moyers? A. Yes, sir.

Q. Are you familiar with the handwriting of George B. Edmonds? A. I have seen a great deal of it.

Q. I show you now three checks appeared to be dated respectively

December 5th, 1891, December 10, 1891, and January 16, 1892, and ask you if you know the signatures and the endorsements? (Handing witness the checks.)

Mr. TUCKER: Objected to on the ground that the witness has not qualified himself to speak concerning the writing or the handwriting of Col. Moyers or of Mr. Edmonds.

A. I am familiar with Col. Moyers' writing. These are the signatures of Col. Moyers. The signatures on these checks are Col. Moyers'. The endorsements on the three checks are in the handwriting of George B. Edmonds.

Mr. BIRNEY: I offer the three checks in evidence and ask the examiner to mark them respectively as Defendant's Exhibits Nos. M. N. R. Nos. 2, 3 & 4.

180 Cross-examination.

By Mr. TUCKER:

Q. Mr. Healy, how do you fix the time when you left Col. Moyers' employment? A. Well, I could fix it if I brought in some letters.

Q. How do you fix the months of August and September, 189[illegible] when you left him? A. Well, it was getting along toward crop time. I was out there pretty much all the time. That is, for a couple of days at a time.

Q. Has anybody connected with this case recently mentioned the date of the summer of 1892 to you? A. No, sir; I have not.

Q. Before your examination or after? A. I don't think—no date has been fixed as to summer of 1892 or any summer.

Q. So in no recent conversation today, or at any other time, has the summer of 1892 been mentioned to you? A. No, sir.

Q. When was it that you ceased to be paid by Col. Moyers for your services? A. Well, let me see now. The difficulty was that I never received my salary by the month. Sometimes it would go on two or three months and Mr. Moyers would hand me $100 or $50, and I would credit that amount on the salary.

Q. When did you last cease to be his salaried employé? A. Well, I think probably in September.

Q. You stated that two or three months before that time you considered yourself not in his employ? A. Not regularly. That
181 is, I was there, but not attending to business because he had others there.

Q. You were paid for that time? A. I did not claim any. I did not get any and never asked for any.

Q. How often would you be in the office prior to September, 1892. A. I was there all the time. I slept there in the back room. I had a room there.

Q. How much were you there during the day? A. Well, I was there probably four or five hours.

Q. Where was Col. Moyers' office at that time? A. 1305 E street to the best of my recollection.

Q. So when you left Col. Moyers' employ his office was at 1305 E street? A. Yes, sir.

Q. And this was in the summer of 1892? A. I think so; yes, sir.

Q. What were the names of Col. Moyers' other clerks at the time you left him? A. Why one was Mr. John C. Scott and George F. Cahill.

Q. Is he living? A. I suppose he is. I have not seen him for eight or nine years.

Q. Anybody else? A. Tyler Page.

Q. Is he living? A. I could not state that. I have not seen him probably for six or seven years.

Q. Anybody else? A. I don't remember anybody else.

182 Q. Now, during what period of time was it that Col. Moyers paid these small sums of money to Mr. Edmonds. Between what years? A. Well, let me see now. As soon as Edmonds turned the cases over to him. That was probably along in 1888 to the best of my recollection.

Q. From that time on up to the time you left Col. Moyers you would frequently see Col. Moyers pay small sums to Mr. Edmonds? A. The Colonel would sometimes ask me to hand Mr. Edmonds $25. or $10. or whatever the amount was and I would go to the safe and get it and Mr. Moyers would be in his back room and I would take it in and lay it down on the desk and Mr. Edmonds would be in there.

Q. How frequently would that occur? A. Very often. I cannot state the number of times.

Q. Every week? A. Probably not so frequent.

Q. Every two weeks? A. Whenever he wanted some money.

Q. Did Col. Moyers to your knowledge keep any record of these payments that were made to Mr. Edmonds? A. I presume so.

Q. Do you know of your own knowledge whether he did? A. I do not know.

Q. Did you ever see a receipt pass between the parties? A. I retired from the room at the time and would go right back to my desk and he would usually roll the money and put it in his pocket.

183 Q. You said that Edmonds told you that he never had anything else to live upon at that time? A. He did.

Q. Do you know Mr. Edmonds' brother, James B. Edmonds, who was lately Commissioner in this District? A. I have — him certainly.

Q. Do you know whether he ever afforded George B. Edmonds any means of support? A. I could not say.

Q. Do you know Mr. Horace S. Cummings? A. I do not know.

Q. You don't know of course, whether he ever afforded Mr. Edmonds any means of support? A. No, sir.

Q. You say you knew something of this contract in 1888 between Col. Moyers and Mr. Edmonds? A. Yes, sir.

Q. Did you ever see it? A. I possibly have seen it. I saw pretty much all the contracts and fee arrangements that were in the safe.

Q. Do you know how many cases were in the schedule attached to that agreement? A. I could not say.

Q. How many would you say they were? A. I could not because there were several pages of them.

Mr. BIRNEY: Objected to for the reason that the question assumes that there was a schedule attached and the witness has not so testified.

Q. How many would you say there were? A. I could not make any definite statement as to that. I never counted the cases.

184 Q. State according to your best recollection. A. As to the number?

Q. Yes, sir. A. I could not.

Q. A great number or very few? A. It is difficult for me to say as to that.

Q. What is your best recollection about it, Mr. Healy? A. I know there was a list.

Q. You know there was a list.

Mr. BIRNEY: Let him go on with his answer fully.

A. I cannot answer fully as to the exact number of cases on that list. It has been sometime ago.

Q. Do you remember the names of any of the claimants? A. No, sir; if I saw the list probably I would remember them; yes, sir.

Q. Do you know, Mr. Healy, when the claims appropriated for by the act of 1891 were actually paid by the Treasury Department? A. Well, I do.

Q. When was it? A. Along in from March on up to say in the summer—sometime after that because I went through the Warrant division through the Treasury Department a great many times myself.

Q. I am speaking of the act of 1891. A. That is what I am talking about.

Q. Was not the payment for a good many of the claims delayed until 1892? A. There may have been some held up.

185 Q. Don't you know as a matter of fact there were a number held up? A. There were two or three large cases held up; yes, sir.

Q. Who had charge of the drafts issued by the Treasury Department in payment of these claims under the act of 1891—appropriated for under the act of 1891. By this I mean such drafts as Col. Moyers was interested in? A. Well, Mr. Moyers was here himself at the time.

Q. Who collected the drafts from the Treasury Department? A.

Well, sometimes I would go down and sign them—sign for a draft when I pulled it through and bring it to the office.

Q. You would have the drafts in your possession? A. Yes, sir; and hand them to him. That is to the best of my recollection, yes, sir.

Q. You recall no case or no claim paid under the act of 1891 in which Mr. George B. Edmonds was interested? A. I cannot recall a case.

Q. How much money did Col. Moyers usually keep in his safe? A. Well that is very hard matter to state. Sometimes three or four hundred dollars and sometimes there was not any.

Q. As a matter of fact was it not the invariable practice for the Treasury Department to sign the draft at that time, in 1891 and 1892, directly to the claimants and not to deliver them to the attorneys? A. Well, now, let me remember. I think there might possibly have been a clause in that act—that omnibus bill. I am not certain.

186 Q. What was the practice at that time? A. As to the attorney receiving the draft?

Q. Yes, sir. A. I don't remember distinctly.

Q. Then you are not altogether sure of your recollection that you collected some of the drafts for Col. Moyers at the Treasury Department? A. I would have to refresh my memory on that fact.

Q. You are not sure that you are correct in your testimony that Col. Moyers collected some of the drafts himself at the Treasury Department? A. Well, I am sure on that because on three or four large cases the claimants were right here—were present and he was with them.

Q. Wherever the claimant was a non resident do you know of any instance where Col. Moyers collected the draft at that time from the Treasury Department or you collected the draft from the Treasury Department for Col. Moyers? A. A number of cases were not probably under that act?

Q. Not under the act of 1891—the appropriation act of 1891? A. I have paid very little attention to these matters the last eight or ten years—the last seven or eight years.

Q. Who kept Col. Moyers' books during your connection with him—book of accounts? A. What accounts do you mean?

Q. Cash accounts. A. He kept it himself.

187 Q. But as a matter of fact to your knowledge who kept the books of account showing his receipts and disbursements? A. He kept a diary.

Q. Do you know whether he kept any books showing his collections and disbursements of money? A. I could not state.

Q. Do you know of any books except his diary? A. That is all.

Q. Now, I understand you to state that Mr. Edmonds came to Col. Moyers' office in 1888, according to your best recollection, and that he frequently referred to a printed list of disallowed claims which Col. Moyers had in his office? A. Yes, sir.

Q. That he had full and free access to this list of disallowed claims? A. He did.

Q. Do you know what use Mr. Edmonds made of his access to this list of disallowed claims? A. I do.

Q. What? A. Well, he would go through the list and when he took out a case, the report, was printed there and the disallowance and then he came to see me and asked me if I thought that was a good case, Well, from reading the report I would say this is good and answer in the affirmative and he would ask me then to make a request to have the case referred to the committee.

Q. Well, did he simply take out the claims in which he and Col. Moyers were interested and take that action then? A. The
188 cases in which he had no interest whatever as far as I could see.

Q. Do you mean to say he selected the claims in which Col. Moyers was interested and then took this action? A. He did not take any particular claim—only those in the book.

Q. This book consisted as I understood it of disallowed claims generally and not only of claims in which Col. Moyers was interested? A. Yes, sir.

Q. And Mr. Edmonds would look over this book and select such claims as he thought might be re-opened and perhaps take some action on behalf of the claimant or endeavor to form some connection with the claimant. Is that right? A. Well, he would ask me to make out a request and I would take it down to Congress with my other papers and see a member from the district where that case was rejected and have it referred to the committee.

Q. You were then in the employ of Col. Moyers? A. Yes, sir.

Q. And of course you would not do anything detrimental to Col. Moyers' interest? A. No, sir.

Q. And by acting thus for Mr. Edmonds you did not mean to act contrary to Mr. *Moneys'* interest in any way? A. No, sir.

Q. To your knowledge you never acted in this way for Mr. Edmonds in any claim in which Mr. Moyers' was interested? A. I think there was an agreement—possibly there might have been.

Q. Between Col. Moyers and Mr. Edmonds in respect to the prosecution of the claims?

189 Mr. BIRNEY: Objected to as being a statement of counsel and not a statement of the witness.

Mr. TUCKER: Counsel for complainant here states that the above is a question propounded to the witness and asks the examiner to repeat it with a rising inflection on the last word.

Hereupon the question was read over by the examiner.

Q. Answer that Mr. Healy. Just answer that. You said there was an agreement between Col. Moyers and Mr. Edmonds in respect to the prosecution of the claims? A. In that individual case?

Q. We are not speaking of an individual case are we. What I

want to get at is this, Mr. Healy. Did you ever act for Mr. Edmonds in any claim when by so doing you would act in a manner detrimental to Col. Moyers' interest to your knowledge? A. No, certainly not.

Q. Did Mr. Edmonds ever ask you to assist him in any way in any claim in which Col. Moyers was interested when by so doing Col. Moyers would have been effected injuriously? A. Well, I would say that—I cannot say that he did.

Q. Well, by saying that Mr. Edmonds had access to this printed list of disallowed claims do you mean in any way to imply that he in any way took hold or took charge of any claim in which Col. Moyers was interested so as to effect Col. Moyers' interest injuriously in respect to that claim? A. Well, now, he possibly may have.

190 Q. Can you name any instance in which he did that? A. No, sir.

Q. Why do you — that he may have done it? A. It is right to say what he may have done. I do not know.

Q. Have you any reason to believe that he ever did do anything of the sort? A. Well, I knew nothing of Mr. Edmonds outside the transaction previous to his coming to the office.

Q. Did Col. Moyers know at the time that you were doing this service for Mr. Edmonds? A. It was at his suggestion. He would say "Let Mr. Edmonds see the books." I got the books—I kept this list because I did not want to loose them. They were valuable we thought.

Q. It was Col. Moyers' suggestion that — would do this service for Mr. Edmonds? A. Sometimes.

Q. Was there any instance in which you acted in respect to any claim without the knowledge of Col. Moyers? A. Well, I cannot say.

Mr. BIRNEY: Counsel for the defendant gives notice that he will probably have to recall this witness for further examination.

THOMAS J. HEALY.

Subscribed and signed for the witness by me by consent and agreement of counsel this 10 day of March, 1900.

MASON N. RICHARDSON, *Examiner.*

191 V. B. EDWARDS, a witness of lawful age being first duly sworn for and on behalf of the defendant, testified as follows:

By Mr. BIRNEY:

Q. Please state your residence, your occupation and how long you have pursued your profession? A. Lawyer and have been practicing here about twenty-five years.

Q. Where has your practice as a lawyer been principally? A. In the courts here and before the departments.

Q. Before the Court of Claims? A. Yes, sir, in the Court of Claims.

Q. For how many years have you practiced before the Court of Claims? A. Twenty years probably.

Q. Are you familiar with the class of cases that have been before that court and have been before it for the past twenty years? A. I am.

Q. And with the practice of that court? A. Yes, sir.

Q. Are you familiar with the cases which were provided for by what is known as the Bowman act of 1883? A. I have had several of those cases for myself—tried them in the court.

Q. And you regard yourself as familiar with them? A. Well, I am pretty familiar with them?

Q. Will you please state what the character of those cases are in a general way—what was the history of the legislation regarding them?

192 Mr. TUCKER: That is objected to as irrelevent and incompetent and upon the ground that the matters referred to are not the subject of expert testimony or if they are subject to expert testimony that the witness has not properly qualified himself as an expert.

Q. Go on. A. Well, under the act of 1883 they provided for claims for stores—what we call stores and supplies and for rent—cases providing for the rent—where it was not at the seat of war.

Q. We- they all claim growing out of the war of 1861 and 1865?

It is hereby stipulated and agreed between counsel for the respective parties that the objection stated above shall apply to all questions of a similar character.

MASON N. RICHARDSON, *Examiner.*

—. The claims provided for under the act of 1883 were those growing out of the late war—1861-'65.

Q. What authority in a general way was given the Court of Claims under the act of 1883? A. That was given the Court of Claims to find the question of loyalty first and then the question of facts as to the taking of the property, title and the value of the property taken.

Q. What then was to be done by the court? A. Well, after the case was referred to the court by Congress a petition generally was filed, the evidence that had been taken before the Southern Claims

193 Commission if it was not sufficient additional testimony was taken on the question of loyalty and briefs and argument had to be prepared both by claimant's attorney and defendant's attorney and submitted to the court and the question of loyalty first found. If that was found in the affirmative. In other words if any claimant was found loyal the evidence taken in addition to that which had been before the Southern Claims Commission, briefs

on both sides and either submitted by consent or submitted to the court and the findings of the fact by the court. If the court held the findings of fact as to the value then it was sent to Congress for appropriation.

Q. When was the first appropriation made for the payment of such claims? A. My remembrance that by the act of 1891 first—that is all those claims sent up by the Court of Claims.

Q. Do you recollect what appropriation, if any, contained a provision for the re-hearing on the application of the Attorney General? A. The act of 1891—well, now, I would not like to answer that question definitely without looking at that act. The custom now is under that act of 1883 after we get a findings of fact the Attorney General makes a new call around the department to see whether any new facts have turned up or not by which he can predicate either a motion for a new trial or make some objections to the certification and they don't certify the facts now until the Attorney General marks it O. K.

Q. How much time is given him for that, do you know? A. No, I don't. They have been three or four months over there considering to give an answer.

194 Q. You said that the first appropriation was made in 1891. When was the next one made? A. March 3rd, 1899.

Q. How long before 1891 were the findings of the Court of Claims in favor of the claimants first certified to the Congress? A. I do not know. It must have been four or five years; probably longer. I could refresh my memory by one I had sent up there I think it was either 1883 or 1884.

Q. And no appropriation was made until 1891? A. Not until 1891.

Q. What efforts, if any, of which you were aware, were made between 1891 and 1899 to secure appropriations for the payment of the findings of the Court of Claims in this class of cases? A. I think there was a bill there every Congress. If not in every Congress by individual bills, there would be a general bill including all those that had been certified up.

Q. Those bills failed until the act of 1899? A. The general bill. There might have been a few individual bills gotten through.

Q. Mr. Edwards, state, if you know, what the general estimate in the profession was of the value of these claims in view of this reluctant legislation in Congress? A. Well, I do not know that they had any general value to them.

Q. Well, how were they regarded, as good, bad or indifferent? A. Generally as indifferent.

Q. Why? A. It was impossible to tell what they were

195 worth on account of the uncertainty of legislation and the uncertainty of what the findings would be as to loyalty and also as to the merits.

Q. Had those cases before the act of 1893 been rejected in any way? A. Well, that class of cases do you mean?

Q. Yes, sir. A. That class had been rejected by the Southern Claims Commission. It was those that were rejected which were certified to the court.

Q. Do you remember when the Southern Claims Commission closed its labors? A. I don't remember now. I think it was created in 1871. I am sure about that. That is my impression that it was 1871. I am sure about that.

Q. Do you know when its duties closed? When it closed its duties? A. I don't remember the exact date, but it was seven or eight years—it may have been nine or ten years.

Q. It closed somewhere about 1878 or 1879? A. It must have been somewhere near that.

Cross-examination.

By Mr. TUCKER:

Q. You are engaged with Mr. Birney, I believe, in defending Col. Moyers in this suit? A. Yes, sir.

Q. You were the original attorney for Col. Moyers in this suit? A. Original attorney?

196 A. Yes, sir. Q. No, sir, I think Mr. Birney was in——

Q. You and Mr. Birney both came in the case together as Col. Moyers' attorneys? A. Yes, sir.

Q. How long have you known Col. Moyers? A. I think about twenty years or over.

Q. What has been his business since 1883? A. Well, his business has been generally prosecuting what we call these Southern claims, stores and supplies in the Court of Claims.

Q. *Is* is the same class of claims which you think have had no **value?**

Mr. BIRNEY: That is objected to as a statement of counsel and not warranted by the evidence. The question assuming that this witness has said that the claims were without value.

A. I intended to say that it was hard to estimate what the value was at that time taking them before anything was done with the claims.

Q. Were there not various special acts prior to the general act of 1891 appropriating for the payment of claims of this character? A. There was one what we called Southern Claims Commission. There were claims—they generally appropriated regularly, I believe, each year for this class of claims where they had been reported to Congress as right by the Southern Claims Commission.

Q. Then in 1891, an act was—the omnibus act was passed

197 appropriating for claims of this character. Is that right? A. I believe it is.

Q. Between 1891 and 1899 were there not various special acts appropriating for claims of this character? A. There might have been. I don't remember of very many, if any.

Q. Were you in any way connected with Col. Moyers in 1891? A. You mean in business?

Q. Yes, sir. A. No sir.

Q. Do you know the extent of his business at that time? A. No, sir; I do not.

Q. Have you any idea of what fees he derived from claims appropriated for by the act of 1891? A. No, sir.

Q. Do you know whether he had a large number of claims—do you know whether he was interested in a large number of claims appropriated for by the act of 1891 or small number? A. No, sir, I do not know because under the act of 1891 I did not have any claims in that myself and I did not, of my personal knowledge, know of any one that did.

Re-direct-examination.

By Mr. BIRNEY:

Q. Has Col. Moyers' business be- confined entirely to these Southern Claims Commission cases? A. So far as my knowledge goes it has.

Q. Do you know of his having prosecuted cases under the act of July 4th, 1864? A. I know several years ago that he had claims under that act and had collected the money under that act—
198 that was for the payment of loyal claimants in loyal States.

Q. He conducted a large business under that act did he not?

Mr. TUCKER: Objected to as leading.

A. Now, I will only have to answer that as hearsay.

Q. Was it by hearsay or general understanding that you answered Mr. Tucker's question as to Col. Moyers' business? A. Well, that was under that act of 1864—I knew personally that he had under that act of 1864—he did have some claims under that act.

Q. Under the act of 1864 cases were referred to the Court of Claims were they not?

Mr. TUCKER: Objected to as leading.

Q. The cases disallowed I mean. Or do you recollect? A. I do not recall any provision for a claimant under the act of 1864—for the Court of Claims unless the court would have jurisdiction without reference—that is, the claim occurred in those loyal States and the statute of limitations had not run against them then the court could take jurisdiction of them.

V. B. EDWARDS.

Subscribed and signed for the witness by me by consent and agreement of counsel this 12 day of March, 1900.

MASON N. RICHARDSON, *Examiner.*

Hereupon the further taking of testimony in this cause was adjourned until Tuesday March 13th, 1900, at 11 o'clock.

MASON N. RICHARDSON, *Examiner.*

199 WASHINGTON, D. C., *March* 13, 1900.—11 o'clock a. m.

Met pursuant to adjournment in the law offices of Messrs. Birney & Woodward, Mertz building, to take further testimony for and on behalf of the defendant.

Present: C. C. Tucker, Esq., for the complainant; A. A. Birney, Esq., for the defendant; parties, examiner and witnesses.

Whereupon THOMAS J. HEALY, a witness heretofore sworn for and on behalf of the defendant, being recalled for further direction t[e]stimony, testified as follows:

By Mr. BIRNEY:

Q. On cross examination yesterday, Mr. Healy, you were asked by Mr. Tucker concerning some list of cases and the number of cases in that list. To what list did you refer? A. I had reference to a printed list by the Commissioner of Claims containing all the disallowed cases before that committee.

Q. Did you mean to be understood as saying that that list or any list was attached to the contract which you mentioned as having seen in Col. Moyers' safe?

Mr. TUCKER: Objected to as leading and suggestive.

A. No, sir; of course not.

Q. I show you now a book entitled "Consolidated Index of Claims Reported to the House of Representatives, 1871–1880" and containing a great list of claims and ask you if that is the book to which you
200 referred. Is that *is* the list you referred to in your testimony?

Mr. TUCKER: Same objection.

A. That is the list I referred to as the printed list of claims.

Q. You have testified to certain payments of money made by Col. Moyers to Mr. Edmonds from time to time. Did you ever make any such payments yourself? A. Well, I made some small payments to him.

Mr. TUCKER: The same objection and also as it is not proper redirect examination.

Mr. BIRNEY: That is admitted. I told you I was going to recall him.

Q. How many of such payments did you make? A. That I could not say definitely how many it was—at different times.

Mr. TUCKER: Same objection.

Q. Under what circumstances did you make the payments—how was it you made the payments instead of Col. Moyers?

Mr. TUCKER: Same objection.

A. When Mr. Moyers was away Mr. Edmonds would come to me, as I had the funds in the office there, and I would let him have $20 or $10, and sometimes Mr. Moyers would write to me to let Mr. Edmonds have $20, and I would just take his receipt and send it back.

Q. Who acted as paymaster in the office when Col. Moyers was absent? A. I did in a manner.

Mr. TUCKER: Same objection.

201 Cross-examination.

By Mr. TUCKER:

Q. Mr. Healy, why did you let Mr. Edmonds have this money? A. Because Mr. Moyers said in his letters when he was away, knowing his circumstances to let him have it.

Q. Out of charity? A. Well, I presume so—whether it was on his business matters—it was on his business matters—that is as definite as I can make it.

Q. In other words, you do not know whether these payments were made out of charity or whether they were payments made by Col. Moyers in settlement of the accounts between them or not? A. Well, they had no settlement of accounts between them because there was no case in which Mr. Edmonds had ever been interested that had been settled up to that time.

Q. Then they were gifts to Mr. Edmonds by Col. Moyers for charity-sake.?

Mr. BIRNEY: That is objected to as not having been stated by the witness and as an assumption on the part of the counsel.

A. I cannot say that.

Q. Well, then why were they made. Q. Because Mr. Edmonds had no other way of getting more money as far as I could see and was probably depending on that.

THOMAS J. HEALY.

Subscribed and signed for the witness by me by consent and agreement of counsel this 13 day of March, 1900.

MASON N. RICHARDSON, *Examiner.*

202 P. E. DYE, a witness of lawful age being by me first duly sworn according to law for and on behalf of the defendant, testified as follows:

By Mr. BIRNEY:

Q. Please state your age, your profession and your residence, Mr. Dye? A. 69 years old, lawyer by profession and my place of business—my office is 514—11th street, northwest, Washington, D. C.

Q. To what extent in the practice of your profession have you practiced in the Court of Claims? A. Well, I have practiced in the Court of Claims since 1870 and my principal business has been practicing before that court in claims.

Q. Are you familiar with the class of cases which under the so-called Bowman act of 1883, went to the Court of Claims? A. Well, I think I am. I have had many of those cases and prosecuted them there.

Q. Can you give, Mr. Dye, a precise statement of the history of those cases?

Mr. TUCKER: Objected to as irrelevant to the issues in this case and as incompetent and immaterial.

It is stipulated and agreed between counsel that said objection is to apply to all similar questions asked this witness.

MASON N. RICHARDSON, *Examiner.*

Mr. TUCKER: And also if the witness is asked to express any expert opinion upon the value of the so-called Bowman act
203 such questions are objected to as the matter is not the subject of expert testimony.

Q. Now, go ahead. A. The Bowman Act cases as I understand them were war claims that accrued during the war and for a long time they were prosecuted—that is where they arose in States not in rebellion—they were prosecuted under the act known as the "Fourth of July act" and prosecuted before the Quartermaster General and the Commissary General. Subsequently Congress passed an act known as the Bowman act March 3, 1883, which embraced claims of a similar character from States that had been in rebellion and an act was passed prior to that time in March 3, 1871, by Congress forming what was known as the Claims Commission.

Q. The Southern Claims Commission? A. They dubbed this the Southern Claims Commission when they organized in Washington—it was only known by the name they gave it I suppose themselves. It was not so in the law. It was known as the Claims Commission. They took up claims—this class of war claims—where they had occurred in States in rebellion and caused testimony to be taken and tried the cases and allowed some and rejected others. The proportion of claims that were allowed were very small compared with the number of claims that were filed. The act I spoke of immediately

before, that is the Bowman act of March 3, 1883, was passed with a view to have the cases, that gave an opportunity for cases that had been rejected by that commission to be tried under that act—under the act of March 3, 1883, in the Court of Claims. Under the act it was necessary that the case should have been sometime filed before some department of the Government or they would not act
204 under that act. Subsequently in 1887, the 3rd of March, the act was passed commonly known as the "Tucker act" now, which provided that when a bill was pending in either House of Congress the bill might be referred to the Court of Claims and all the papers in the case to find the facts for the information of Congress.

Q. When was the first appropriation made for the payment of amounts found to be due by the Court of Claims under the Bowman act? A. I believe in 1891, that is my recollection.

Q. When was the next appropriation made? A. The last Congress, I believe. I do not know as I know the exact date, but I think about the 3rd of March.

Q. 1899? A. Yes, sir, 1899.

Q. Can you approximate from your knowledge of the cases the proportion of these claims which under the Bowman act were allowed by the Court of Claims in whole or in part? A. That question has been found by some—well, it seems to me the Attorney General made a report on that question. I have seen it somewheres and it was in some report before Congress, but I cannot now name it exactly. I think that only about one in twelve, and as to the amount allowed on the claim out of this one in twelve my experience has been, and I presume my cases have been as good as any others—I have always refused to take cases unless I had a opportunity to look into them and determine whether I thought I could make the cases. Indeed, I would not take a small case now of that class. It would not pay one. It would not pay you one's salt so to speak.

205 Q. What was the proportion of the amount of the claims? A. The amount allowed I judge is about fifty per cent. In all the cases I have prosecuted before the Court of Claims and I have taken great pains and care in prosecuting those cases. I don't remember of having but two cases that were allowed the amount I claimed—the full amount of the cases.

Q. Do you know the percentage of amounts allowed the claimants rejected and allowed by the Court of Claims. That is to say, the whole amount claimed in all the cases, what was the percentage or proportion of the amount actually allowed? A. Well, from my information and observation I should say less than fifty per cent.

Q. Have you seen upon that subject any official report from the clerk of the Court of Claims? A. I have seen a report, but I was under the impression it was issued or gotten up by the Assistant Attorney General aided by the clerks in the Court of Claims. I saw them at one time working and I was told that they were talking

up all the claims—that they had been running over them and taking the amount with a view to preparing an estimate of the kind you suggested.

Q. Now, Mr. Dye, can you state the estimate placed upon the value of the claims of this kind, prior to the appropriation of 1891 and subsequent to the appropriation of 1891 and prior to the appropriation of 1899?

Mr. TUCKER: Objected to as calling for purely hearsay testimony and as irrelevant.

206 Q. I mean the general estimate in the profession—among those practitioners practicing before the Court of Claims? A. If I speak from my own experience in cases that I practiced myself—that I prosecuted myself and from the information I have obtained from other attorneys with whom I have talked——

Q. I will ask you to speak from your own experience and state what is your estimate from your experience of the value of those claims at the times I have mentioned?

Mr. TUCKER: Objected to as irrelevant and immaterial and calling for testimony upon matters which are not the proper subject for expert testimony.

A. Personally I regarded the cases that had been tried by the Claims Commission—the Southern Claims Commission, if you want to so designate it—I regarded those cases of very doubtful value. There were some contingencies which beset many them, having been tried by that commission and rejected, the testimony having been taken and the claims rejected unless a man had information as to whether he could prove the case he could not afford to put money upon them or time. Sometimes the claimant would suggest that he could prove a state of facts naming them, but there is no certainty about that. I regarded those claims of small value.

Q. Do you know if that was the general estimate in the profession?

Mr. TUCKER: Objected to as calling for purely hearsay testimony and as irrelevant, incompetent and immaterial.

A. That was the general expression of attorneys with whom I have conversed on that subject; they regarded them of very doubtful or of little value. Of course, claims depend upon the
207 testimony.

Q. And these claims depended upon the contingent action of Congress did they not?

Mr. TUCKER: Objected to as leading and suggestive.

A. Yes, sir, and also depended upon the fact whether the man could prove his loyalty.

Cross-examination.

By Mr. TUCKER:

Q. Col. Dye, you have stated that you valued the claims that had been rejected by the Southern Claims Commission—that you considered the claims rejected by the Southern Claims Commission as of very doubtful value. As I understood it the claims appropriated for by the act of 1891 were the claims that had been rejected by the Southern Claims Commission. Is that correct? A. Possibly some of them were, but not all.

Q. Was not the large majority of the claims appropriated for by the act of 1891 claims which had been rejected by the Southern Claims Commission? A. Well, I could not tell what proportion just at this moment, but cases that had been—all the cases that were appropriated for by that act had been filed sometime before the departments of the Government. As I remarked in the direct testimony under the Bowman act no claims unless it had been before the Southern Claims Commission or some of the departments had any standing before the Court of Claims under the Bowman act.

Q. Well, it is not true that the majority of claims appropriated for by the act of 1891 were claims which theretofore had been
208 rejected either by the Southern Claims Commission or by some other tribunal? A. Yes, sir; that is true.

Q. Now, the act of 1891 was the first general appropriation act that had been passed for the payment of *of* such claims as were right, that is payment of rejected claims. A. Well, I think it was.

Q. As a result of the passage of the act of 1891 did not claims of this character obtain a greater value than before the passage of that act? A. They may have had a better standing.

Q. Better standing? A. Well, I should say they would have a better standing by the passage of the act.

Q. Was not the passage of the act of 1891 considered in the profession as a recognition by Congress that claims of the character appropriated for by the act of 1891 were claims which should receive consideration from Congress? A. Well, I should answer that in this way. I think the passage of that act was a recognition of the Court of Claims—the findings of the Court of Claims upon these cases.

Q. Well, now, in your judgment as a practitioner before the Court of Claims and as one handling these class of claims do you not think that after the passage of the act of 1891 claims of this character had a much greater value than before the passage of the act of 1891. A. Well I think these claims did not take on a certain value until after the passage of the last act of 1899, March 3rd, 1899.

Q. Well, if you pardon me, but that is not a response to the question that was propounded. Read the question to the wit-
209 ness, Mr. Examiner.

Hereupon the question was read over to the witness.

A. Well, I will answer that question. I cannot say that they had a much greater value, though probably of more value, than before the passage of that act. I cannot say it was of much greater value, I did not consider them at this time of very great value.

Q. As a practitioner before the Court of Claims and as one interested in this character of claims would you have been more willing to take claims of this character for prosecution after the act of 1891 then before the passage of that act? A. Well, I would if my contingent fee would be what I wished. If my fee had been fifty per cent. of the amount I could collect, I would have been willing to take them.

Q. I do not understand at any time, either before or since the passage of the act of 1891, or since the passage of the act of 1899, claims of this character have any market value? A. You are referring to that—I do not think a man could sell his case for five cents on the dollar, he could not sell it—no one that I know of would advance a cent even on the findings—after the findings were made by the court.

Q. Those claims resemble all other law suits, do they not, in that they depend largely upon the character of the testimony and to vigor with which they are prosecuted by the attorneys in
210 them? A. Of course, they depend upon whether the testimony proves the cases—establishes it and establishes the loyalty of the claimant. That has to be shown that he was loyal to the Government of the United States throughout the war, not part of the time, but absolutely prove it to the satisfaction of the court.

Q. You stated that you have spoken to various attorneys with respect to the value of claims of this character. Who are some of the attorneys you have talked with? A. This was in conversation about claims. We did not designate any particular claims, but the class of claims generally.

Q. Who was some of those attorneys? A. Reese B. Edmondston, Gleen W. Cooper, McPherson, John Paul Jones, and John C. Chaney.

Q. Col. Gilbert Moyers? A. Yes, sir, I have talked with him about it. We have talked together about it. Well, with others, I presume with most of the attorneys who practice before that court.

P. E. DYE.

Subscribed and signed for the witness by me by consent and agreement of counsel this 13 day of March 1900.

MASON N. RICHARDSON, *Examiner.*

Hereupon the further taking of testimony in this case was adjourned until Friday, March 16th, 1900, at the hour of 2 o'clock p. m.

MASON N. RICHARDSON, *Examiner.*

211 WASHINGTON, D. C., *March 17th*, 1900—2 o'clock p. m.

Met pursuant to adjournment at the law offices of Birney and Woodward, Mertz building, to take further testimony for and on behalf of the defendant.

Present: C. C. Tucker, Esq., for the complainant; A. A. Birney, Esq., for the defendant; examiner and witnesses.

Whereupon CYRUS SNYDER, a witness of lawful age being first duly sworn according to law for and on behalf of the defendant, testified as follows:

By Mr. BIRNEY:

Q. Please state your residence, and occupation, Mr. Snyder? A. Washington, occupation, lawyer.

Q. How long have you practiced your profession? A. Since 1858.

Q. In 1892 had you any professional association with the defendant, Gilbert Moyers? A. Yes, sir.

Q. What was it, in a general way? A. I represented and had powers of attorney and contracts with various claimants under the Bowman act—war claims I had associated Col. Moyers with me in many of them; that is, before the Court of Claims.

Q. Did you know George B. Edmonds? A. Yes, sir.

212 Q. Where did you meet him—how did your acquaintance with him arise? A. I met him here in this city of Washington. My acquaintance was formed by reason of his frequent visits to Col. Moyers' office.

Q. Were you frequently at Col. Moyers' office? A. Yes, sir. I staid there a large part of my time. It was the only office I had there.

Q. Did you have a conversation with George B. Edmonds in the summer of 1892? A. I did; yes, sir.

Q. Can you fix about the time when it occurred? A. Well, I had a good many conversations with him.

Q. Did you have a conversation with him concerning in any way the business he had with Col. Moyers?

Mr. TUCKER: Objected to as leading.

A. I did, yes sir.

Q. Can you fix the date of that conversation? A. Well, it was in the later part of June or the first part of July, 1892.

Q. Where did it occur? A. It occurred on the street as well as I remember.

Q. Please state what it was? A. I applied to Mr. Edmonds for a little loan. I was impecunious myself and I wanted a little money. I had seen him have money and I knew that he had some interest with Col. Moyers and I told him of my interests and I applied to him for a loan of $50.00 and he said he did not have any money

then, but was expecting to sell out his interest to Col. Moyers and if he closed that out that he would probably be able to accommodate me.

213 Mr. TUCKER: The latter part of the witness's answer is objected to and at the hearing will move to strike out such parts of his answer as states what Edmonds said to him—what he was in expectation of doing or receiving, on the ground that it is irrelevant, immaterial and incompetent.

Cross-examination.

By Mr. TUCKER:

Q. How long have you known Col. Moyers? A. I have known Col. Moyers since about 1875.

Q. How intimate have you been with him since then? A. Well, we have had business connection more or less.

Q. How intimate—you met him in his office? A. I cannot say how intimate. I made my business headquarters there on my own account.

Q. You stated that Moyers' office was your headquarters? A. Yes, sir.

Q. And that you had no other office? A. Yes, sir.

Q. Where was that office? A. That was 1305 E street, at that time, northwest.

Q. Did Col. Moyers' office remain at that place during your connection with him? A. No sir, no, sir. I have been connected in cases with him from that time to the present.

Q. Where has he had offices since his office was at 1305 E street? A. He moved from there to the Washington Loan and Trust building from there to 1420 New York avenue and from there to 720 17th street.

214 Q. When did he move from 1305 E street to the Washington Loan and Trust building? A. Now, sir, I cannot tell you that, but I think it was sometime between September 1892 and January 1893. I was not here when he moved.

Q. Where was Col. Moyers' office at the time you had this conversation with Mr. Edmonds that you speak of? A. 1305 E street.

Q. You are certain of this? A. I am quite sure, yes, sir.

Q. Whereabouts on the street did you meet Mr. Edmonds and have this conversation with him? A. Well, now, I could not fix any exact locality.

Q. What fixes the conversation in your memory? A. Why because I had to get money elsewhere.

Q. Do you remember having a conversation with Mr. Edmonds and do not recall where the conversation was had? A. I do not recall exactly the locality, but it was in the neighborhood of that office.

Q. In the neighborhood of 1305 E street? A. Yes sir, on the street as well as I remember.

Q. How do you fix the time to be the latter part of June or the early part of July, 1892? A. Because I was very anxious to get away on a contemplated trip South, and I did not get away until the first of September or the last of August—the last days of August—the 29th I believe it was. I was more or less anxious about it and expected that I could probably get some money from Mr. Edmonds.

215 Q. Had you ever borrowed money from Mr. Edmonds before? A. No sir, I never did.

Q. For what reason did you expect that he would be able to lend you money? A. Because I had seen him have money from time to time and I knew in a general way of his interests with Col. Moyers.

Q. What do you know about his interests with Col. Moyers? A. I only knew by some of Col. Moyers' books that I have heard Col. Moyers say and Mr. Edmonds say that he had interests there.

Q. Why at that particular time did you think that Mr. Edmonds would have money or receive money from Col. Moyers? A. I do not know. I did not think—I do not know anything about it. I saw that he had money and I knew that he had some interest, and that he had probably received it from that source or on that account.

Q. You did not know the exact nature of that interest? A. No, sir, except I understood it was this class of Bowman Act claims.

Q. That were provided for by the act of 1891? A. No sir, I did not know anything about that. I knew that he had some interest with Col. Moyers, but the particular cases I did not know anything about.

Q. You knew that he had certain of the Bowman Act cases appropriated for by the act of 1891? A. No, sir.

216 Q. And had you reason to believe that the claims in which Mr. Edmonds was interested were paid under that appropriation act? A. I had no reason to believe it because I did not know anything about it. I did not know that he had anything in that bill or not.

Q. You knew, did you not, that Mr. Edmonds would not receive money on account of claims in which he was interested with Col. Moyers until those claims were appropriated for, did you not? A. Well, no, I assumed, of course, that Mr. Edmonds would get no money on that account until an appropriation was made in the particular cases.

Q. And when you applied to him for a loan it, was in the belief that he had money due him on account of those cases in which he was interested with Col. Moyers, did you not.

Mr. BIRNEY: Objected to on the ground that there was nothing in the testimony of the witness to warrant such an assumption, the witness not having said so.

Q. Now, answer the question please, if you understand it. A. It was upon that theory that I approached him.

Mr. BIRNEY: Read the question, Mr. Examiner.

Hereupon the question was read over to the witness.

Mr. BIRNEY: Now answer it.

Mr. TUCKER: Let the examiner read the question and answer to it so that the witness can add to or subtract from his answer if he wants to.

217 Hereupon the question and answer were read over to the witness.

Q. State, if you please, Mr. Snyder, exactly what Mr. Edmonds stated to you? A. Well, when I asked him for the loan he said that he had no money, but that he was expecting to sell out his interest to Col. Moyers, and if he closed it he could then probably accommodate me. That was the substance, if not the exact words.

Q. Did he state how much he would get from Col. Moyers? A. No sir, no sir.

Q. Did you see Mr. Edmonds after that time? A. I reckon I did. As far as I remember I reckon I did I cannot say positively.

Q. Did he lend you the money? A. No, sir.

Q. Did you ask him for it? A. No, sir, not afterwards.

Q. Why? A. Because I made arrangements with other parties.

Q. How long after this conversation did you see Mr. Edmonds again? A. Well, I could not say that. I do not know.

Q. Did he tell you that he had sold out to Col. Moyers? A. No, sir.

Q. What sort of a looking man was Edmonds? A. Well, he was—it might be classed as a short thick man—broad face—square jaw. I don't remember his color.

218 Q. Did he have a beard? A. I don't remember that.

Q. Was his face smooth? A. It has been a good while ago and I don't know.

Q. Did he have a mustache? A. I could not tell you that with certainty.

Q. Do you remember the color of his hair? A. His hair was dark.

Q. No gray in it? A. I don't know. I don't remember.

Q. How old a man was he apparently? A. At that time, sir, my estimate would be that he was somewhere between 45 and 50. I would say.

Q. At the time that you had this conversation with him in the latter part of June or the early part of July what appeared to be his condition mentally, alert or otherwise? A. I thought it was normal.

Q. Did you see any evidence that he was mentally incompetent? A. No, sir, I did not.

Q. Did you at any time during that acquaintance with Mr. Edmonds observe anything that would indicate that he was mentally incompetent? A. No sir, I did not.

Q. Did he carry on a conversation connectedly—intelligently? A. Why, so far as I remember. At least nothing ever impressed my mind as being abnormal or irregular.

Q. Where did Mr. Edmonds live in the summer of 1892? A. I could not tell you, sir. I never did know.

219 Q. Had you ever borrowed money from him. A. No, sir.

Q. When did you first learn of the pendency of this suit? A. Why, I could not tell. Within a month or so.

Q. From whom? A. Well, now, I could hardly say that. I could hardly tell that.

Q. Have you had any talk with Col. Moyers respecting it? A. Yes, sir.

Q. Have you been promised any compensation for your testimony? A. No, sir.

Q. Has any intimation been held out to you by Col. Moyers or by any one acting for him that you would be compensated for your testimony? A. No, sir, nothing of the sort, sir.

Q. Did you ever see Col. Moyers pay Mr. Edmonds any money? A. I never did.

Q. After this conversation in the latter part of June or the early part of July, 1892—in your conversation with Mr. Edmonds was any mention ever made of any sale having occurred of his interest to Col. Moyers? A. No, sir.

Q. How many talks did you have with him after this interview of June or July, 1892? A. Well, I don't know how frequently. I *I* may have met him and had a casual conversation, but never had any other conversation than the one I have spoken of in regard to any business matter.

220 Q. Where did you meet him after that time? A. Well, I could not tell you. I do not know. I do not know.

Q. Did you meet him in the office? A. In what office?

Q. Col. Moyers' office? A. I met him often in the office. I met him in the office there. In Col. Moyers' office. He came there very frequently.

Q. After this talk? A. Well, I do not remember. He might have been there afterwards and I may have seen him there. I could not say.

Q. When did you last see Mr. Edmonds? A. I could not tell that.

Q. How many years ago? A. Well, I have not see- Mr. Edmonds to my recollection for the space of five or six years and possibly longer.

Q. Can you recall the last time you did see him and where it was? A. No, sir, I cannot. I do not know. I was not intimate with him. My acquaintance was incidental.

Q. Did you see him six years ago? A. I could not undertake to say, sir.

Q. Did you see him seven years ago? A. Well, it would be a mere guess, I do not know.

Q. Did you see him eight years ago? A. I could not tell when, sir.

221 Re-direct examination.

By Mr. BIRNEY:

Q. Did you know anything more about his business relations with Col. Moyers than you have stated? A. No sir, I know nothing about it.

By Mr. TUCKER:

Q. Where is your office at present? A. I have two offices at present. My individual office is at 917 G street. I do a good deal of my work at Col. Moyers' office.

CYRUS SNYDER.

Subscribed and sworn to before me this 17 day of March, 1900.

MASON N. RICHARDSON, *Examiner.*

JOHN C. CHANEY, a witness of lawful age, being first duly sworn according to law and on behalf of the defendant, testified as follows,

By Mr. BIRNEY:

Q. Mr. Chaney, please state your place of residence and your profession and how long you have practiced? A. I reside at 1420 15th street, northwest, in this city and my office is 1320 F street, northwest.

Q. Your profession? A. My profession is lawyer. I have been practicing my profession since the 4th day of July, 1883.

222 Q. Have you held any official position under the Government, and if so, what? A. I was one of the Attorney General's assistants under the Harrison administration.

Q. What was the particular line of your duties in that office? A. The defence of suits in the Court of Claims and in the Supreme Court of the United States.

Q. And in the discharge of those duties did you become familiar with a class of cases provided for by what is known as the Bowman act of 1883? A. Yes, sir, I defended in behalf of the Government a number of those cases?

Q. Will you kindly state briefly the early history of those cases?

Mr. TUCKER: Objected to as irrelevant to the issues in this cause and as incompetent and immaterial.

Q. Go on. A. These cases, so far as the Court of Claims was concerned, were cases which had been rejected by the Southern Claims Commission, which had been established in 1871, and continued up to 1879, and were referred to the Court of Claims for a finding of

facts under what is known as the Bowman act, approved March 3, 1883. This act allows the claimants to file an application before either House of Congress in the shape of a petition and those petitions are then referred by a committee of the Senate or the House to the Court of Claims for judicial investigation and they proceed in the Court of Claims as an ordinary case of account or debt claim against the Government as against an individual, except that the court does not pronounce judgment, but makes findings.

223 Q. And those findings are then reported to Congress? A. Yes, sir, those findings are then reported to Congress and appropriation made by Congress to pay the amount that the court finds due the respective claimants.

Q. How many appropriation acts have been passed to pay such findings? A. There have been two appropriations made to pay findings of the Court of Claims in this class of cases. One in 1891 and the other at the close of the last Congress.

Q. Have you ever investigated to determine what percentage or proportion of claims of this kind—those referred to the Court of Claims were allowed by that court, and if so, what did you find to be the number?

Mr. TUCKER: Objected to as irrelevant to the issues in this case and as incompetent and immaterial and on the further ground that the best evidence would be the records—the official records of the Court of Claims or of the Treasury Department.

A. I have investigated the percentage of cases in which findings are rendered in that court in favor of the claimants and from the investigation I made it ranges about seven per cent. of the cases filed.

Q. That is seven per cent. of all filed are allowed? A. Yes, sir, seven per cent. of all cases are allowed. That is, in some amount. It does not follow that they find the amount that the claimant asks.

Q. Please state what you have ascertained to be the proportion of allowance made to the amount claimed in the seven per cent. of cases which are thus allowed?

224 Mr. TUCKER: Same objection.

A. The allowance made ranges from five or six per cent. of the amount claimed to as much as one-third of the amount claimed. I have no recollection or knowledge of any allowance going above one-third. If I may be permitted, the court apparently regards these cases as stuffed demands and although some of them may not be, having learned that a great many of them are it seems to take the view that all of them are greatly exaggerated in amount.

Q. Now, Mr. Chaney, can you state what was the general value of these claims as a class as estimated by the practitioners before the Court of Claims prior to the appropriation act of 1899?

Mr. TUCKER: That is objected to.

Q. (Continuing:) And if so, give your conclusion?

Mr. TUCKER (continuing objection): That is objected to upon the ground that the question is uncertain in meaning; that its subject matter is not a proper subject for expert testimony and that if it is the proper subject for expert testimony the witness has not qualified himself to testify concerning the value of such claims, if any value could be properly placed upon them and upon the further ground that the question is irrelevant. The question calls for testimony not relevant to the issues in this case and for incompetent and immaterial testimony.

A. The value of these claims as a class is of such uncertain determination that no practitioner in that class of cases feels that there is anything sure about them until the amounts are actually established and appropriation made.

225 Q. For how many years were you engaged in the defence of this class of cases and others for the Government? A. Four years and small fraction of a month.

Cross-examination.

By Mr. TUCKER:

Q. Mr. Chaney, was the act of 1891, the first general appropriation act appropriating for the payment of these Bowman Act claims? A. After the Court of Claims had gotten jurisdiction it was.

Q. Were there any special acts passed prior to the act of 1891 for the payment of the findings of claims in such cases? A. Congress had made an appropriation to pay the findings of the Southern Claims Commission.

Q. But these claims appropriated for by the act of 1891, were claims which had been rejected by the Southern Claims Commission? A. Yes, sir.

Q. Had there been any appropriation prior to the act of 1891, for the payment of individual claims rejected by the Southern Claims Commission? A. Not that I remember of. There might have been and it escaped my attention.

Q. Did not the practitioners in this class of claims regard the act of 1891 as a recognition by Congress of the justice of these

226 claims—of this character of claims to a certain extent? A. Yes, sir, I think it recognized the justice of those claims, but not so far as to recognize the justice of the claims without further investigation by the Attorney General. In that appropriation act the Attorney General's office was required to re-investigate each and every allowance that had been made and was given some months' time in which to file motions for new trial if upon examination it appeared that a thorough investigation had not been made.

Q. So that in a great many claims appropriated for by the act of

1891, for the reason that you have stated, drafts were not issued for many months after the date of the act. Was that true? A. Yes, sir, several months elapsed. In fact until the Attorney General certified that he had no motion for new trial to make in a case there were no drafts issued.

Q. Some of the claims were not paid until 1892. Is that not so? A. I think some of them have been even later than that.

Q. Now, in your judgment and in the judgment of the practitioners of this particular class of claims, so far as you are advised, were not claims of this character considered more valuable after the recognition they received by the act of 1891 than before that act? A. Well, as to that I cannot give a definite answer, for there was a great deal of speculation about it, but it would be my judgment that it did have a good deal of influence upon the belief of the lawyers in being able to obtain money for their clients in those cases.

227 Q. Since 1891, have not the members of the profession engaged in the prosecution of this class of claims been in yearly expectation of the passage of acts to pay these claims? A. Well, if not in yearly expectation, they were in yearly hopes of it. If was deferred so long that they almost lost hope.

Q. In 1892 the hopes of the professional I presume were higher than they were in 1895? A. Yes, sir, there is no doubt about that.

Q. I do not understand you to intimate, Mr. Chaney, that claims of this character have an actual market value? A. No, sir, you could not borrow money on the prospects of such matters.

Q. And that if any value can be placed on a claim of this character it would depend largely upon the testimony that the claimant had in support of his claim like any other law suit? A. Yes, sir. He has got to prove his case.

Q. And one claim might, in not having testimony to support it, be absolutely valueless, while another claim having testimony to support it might have some greater value? A. Yes, sir, that is certainly so, sir.

Q. You have been the attorney for Col. Moyers, who is the defendant in this suit? A. No, sir; not in this suit.

Q. But you have been the attorney for Col. Moyers, who is the defendant in this suit? A. Yes, sir, I have been and am now his attorney in several matters.

228 Q. You also acted as his attorney in this controversy between Mr. Cummings and Mr. Moyers before the suit was actually instituted? A. Yes, sir, up to the time I went out to the Pacific slope to take some testimony in some cases of my own.

Q. I show you Complainant's Exhibit No. 4 attached to the bill of complaint in this case, which purports to be a letter signed by you and addressed to Mr. John W. Butterfield and dated September 1, 1899, and ask you whether you wrote that letter?

(Handing witness bill of complaint with letter attached.)

A. Yes, sir, I wrote this letter.

Q. In that letter you stated: "I have no doubt that the matters can be satisfactorily adjusted and amicably done, but he (Col. Moyers) says that he is absolutely unable to gather together his data this week owing to engagements which now occupy his time." Please state what information you had at the time of the writing of this letter which lead you to the belief that this matter could be satisfactorily adjusted?

Mr. BIRNEY: That is objected to if by it it is intended to call forth communications between attorney and client.

A. I had no information of the merits of the controversy between the gentlemen at all, since I had not seen any of the papers and had no explanation of the controversy, from Col. Moyers, but I expressed my belief of being able to adjust the matter satisfactorily on the theory that there was merit in the controversy between them and that certainly we could bring the matter out satisfactorily.

229 Q. At the date of writing this letter, September 11, 1899, how long had you been acting in the matter for Col. Moyers? A. Well, of that I am not absolutely certain, but it must have been something like two or three weeks. I know that we were all occupied about the collection of drafts and rushed to death about it and certainly it extended over a period of something like that.

Q. You had repeated conversations, had you not, with Col. Moyers with respect to this claim of Mr. Cummings, as administrator of George H. Edmonds? A. No, I only had a very brief conversation twice perhaps, and it amounted to nothing more than that he would look up his papers and gather together his data relating to the question between them and we would talk it over.

JOHN C. CHANEY.

Subscribed and sworn to before me this 17- day of March, 1900.
MASON N. RICHARDSON, *Examiner.*

Hereupon the further taking of testimony in this cause was adjourned subject to notice.

MASON N. RICHARDSON, *Examiner.*

230 WASHINGTON, D. C., *May 14th*, 1900—3 o'clock p. m.

Met pursuant to agreement of counsel at the clerk's office of the Court of Claims, cor. 17th and Penna. Ave., to take further testimony for and on behalf of the defendant.

Present: C. C. Tucker, Esq., for the complainant. A. A. Birney, Esq., for the defendant. Mr. Butterfield, defendant, examiner and witness.

Whereupon GEORGE W. TAYLOR, a witness of lawful age, being first duly sworn according to law for and on behalf of the defendant, testified as follows:

By Mr. BIRNEY:

Q. Please state your name, age and occupation? A. My name is G-orge W. Taylor, age 39, and occupation, clerk in the Court of Claims.

Q. As clerk in the Court of Claims have you here present the original files in certain cases heretofore heard before the Court of Claims? A. They are.

Q. Have you here the original files in the case of Susan Merrill, No. 1681 Congressional? A. They are.

(The witness here produces the files.)

Q. Please look at the paper marked—file marked of the
231 court, filed November 22, 1887, and describe it? A. It appears to be a power of attorney from Susan Merrill, Tupelo, Lee county, Mississippi, to Gilbert Moyers.

Q. Dated when? A. Dated the 16th day of November, 1887, and sworn to before R. D. Porter, clerk, circuit court, Lee county, Mississippi.

Q. Is that the original paper on file in this court as the original power of attorney? A. It is.

Q. Please look at the docket or other proper place of record of that case and say if George B. Edmonds appears to have been in any way concerned in it in this court? A. The name of George B. Edmonds does not appear anywhere on the record.

Q. The files in these cases also contain the original petition filed before the commissioner of claims under the act of 3rd of March, 1871? A. As far as I know they often contain the original petition and often they do not.

Q. Look in the files of Susan Merrill's claim and I produce to you the original petition and state who appear on that petition to have been the attorneys for the claimant.

(Witness here produces from the files the original petition in question and examines it.)

A. Pruett and Francis appear to have been the attorneys before the Southern Claims Commission in this case.

Q. When was that petition filed before the claims commission.
A. It does not appear what date it was filed.

232 Q. Give the date of the petition then? A. It was filed before the commissioners of claims and it was sworn to before John L. Moseley, United States commissioner, April 30, 1872.

Q. Who was the attorney of record in this court, Mr. Taylor? A. In this case?

Q. Yes, sir. A. Gilbert Moyers.

Q. Did any other person appear to be interested as attorney. *Q.* No one appears on the record.

Q. Did you know the firm of Pruett and Francis? A. I did not.

Q. Do you know Mr. John R. Francis? A. I do not know him.

Mr. TUCKER: I want to put in an objection there to all of the foregoing testimony of this witness. I object to it as wholly immaterial, it being immaterial whether George B. Edmonds appears of record as attorney in the case referred to or not, the point at issue between the parties to this case being whether this case was covered by the partnership agreement mentioned and described in the bill of complaint

Q. Mr. Taylor, will you now produce the files in case No. 4931 and 6966, Congressional, the case of Henry T. Cate against the United States?

(The witness now produces the files in question.)

Q. Please look on the docket and say who is the attorney of record in the case of Cate—whether George B. Edmonds appears to have been interested as attorney in the case?

233 Mr. TUCKER: Objected to for the reason stated above.

A. Gilbert Moyers appears as attorney of record.

Q. In the Court of Claims? A. Yes sir, in this case.

Q. Does George B. Edmonds? A. The name of George B. Edmonds does not appear anywhere?

Mr. TUCKER: Same objection.

Q. Will you please produce the power of attorney filed in this case of Cate against the United States in this court?

(Witness here produces the power of attorney.)

Q. Please describe the same. A. It appears to be a power from Henry T. Cate, West Fork, post office, Washington county, Arkansas. Sworn to before James H. Van Hood, notary public, the 27th day of January 1888, filed in the Court of Claims, July 30th, 1888.

Mr. BIRNEY: The power of attorney described by the witness is here offered in evidence on behalf of the defendant and the examiner is requested to make a copy of the same, the original being a part of the files of the Court of Claims.

Power of Attorney.

Know all men by these presents, that I, Henry T. Cate, of West Fork, P. O., county of Washington, in the State of Arkansas, have made, constituted and appointed, and by these presents, do make, constitute and appoint Gilbert Moyers, of Washington, D. C., my

true and lawful attorney irrevocably for me, in my name,
234 place and stead hereby annulling and revoking all former powers of attorney or authorizations whatever in the premises to prosecute my claim against the United States for stores and supplies taken by the Federal forces for their use during the late rebellion and to prosecute the same before any of the departments of the Government or before the Congress of the United States, before any office, commission or convention specially authorized to take cognizance of said claim or through any diplomatic negotiations that may be deemed best for the interests of all parties concerned in this matter and to from time to time furnish any further evidence necessary or that may be demanded, giving and granting to my said attorney full power and authority to do and to perform all and every act and thing whatsoever requisite and necessary to be done in and to the premises as fully and to all intents and purposes as I might or could do if personally present at the doing thereof, with full power of substitution and revocation and to receipt and sign all vouchers, hereby confirming all that my said attorney, or his substitute, may or shall lawfully do or cause to be done by virtue hereof, and I do hereby authorize all certificates or drafts in payment thereof to be delivered or sent to my said attorney and in consideration of my said attorney's services and expenses I do hereby acknowledge a lien in favor of my said attorney on any draft or certificate that may be issued in payment of said claim.

In witness whereof I hereunto set my hand and seal this 27th day of January, 1888.

HENRY T. CATE. [SEAL.]

J. F. MAYS.
V. J. ELDER.

Must be attested by two witnesses.

235 STATE OF ARKANSAS, }
County of Washington. }

Be it remembered that on this 27th day of January, 1888, before the undersigned, a notary public, within and for the county and State aforesaid, personally appeared the within named Henry T. Cate, with whom I am personally acquainted and who acknowledged that he executed the foregoing power of attorney for the purposes therein contained.

In witness whereof, I have hereunto set my hand and seal at office the day and year last above mentioned.

JAMES H. VAN HOOD,
Notary Public.

[NOTARIAL SEAL.]

Endorsed as follows: Court of Claims. Power of attorney, No. 4931 Cong. Claim of Henry T. Cate, Washington, Ark. (Underneath in print.) Filed by Gilbert Moyers, Washington, D. C. Filed, July 30th, 1888.

It is agreed between counsel that the form of the power of attorney in question is similar to that in the case of Susan B. Merrill.

Mr. TUCKER: The solicitor for the complainant objects to all the testimony of this witness which has for its object an attempt to show that George B. Edmonds does not appear to have been an attorney of record in any of the cases in the Court of Claims which have been or will be referred to by the witness, upon the ground that such testimony is utterly immaterial, the issue being the parties being
236 as to whether the cases in question were included in the partnership agreement between Edmonds and the defendant, which is described in the bill of complaint.

It is agreed between counsel that this objection shall apply generally, to all questions, the purpose of which is to adduce testimony of the character indicated.

MASON N. RICHARDSON, *Examiner.*

Q. Please look at the original petition before the claims commission in the case of Henry T. Cate and state who was the attorney who filed that petition. A. The petition appears to have been filed by George W. M. Reed, of Fayetteville, Arkansas.

Mr. TUCKER: The question and answer are objected to as wholly immaterial.

Q. Now, look at your docket in the case of J. C. Tappan, administrator of Samuel L. Sutton, 5160, and state who appears to have been the attorney of record and whether George B. Edmonds appears in anywise connected with the case. A. The names of Moyers and Edmonds appear on the record as attorneys of record in this case.

Q. When was the appearance entered? A. November 9th, 1888.

Q. Now look at the case of Richard Butler, No. 6850. A. In this case no one appears on the record as attorney of record.

Q. Does the name of George B. Edmonds appear there? A. The name of George B. Edmonds does not appear.

237 Q. Who appears to be the attorney of record by the findings of fact, made by the court in the case? A. Gilbert Moyers.

Q. Give the date of the findings of fact. A. June 10th, 1895.

Q. Look at the case of John P. Davidson, No. 6809 and say what attorney or attorneys appears of record? A. Gilbert Moyers appears as attorney of record.

Q. When was his appearance entered? A. February 20th, 1889.

Q. Does George B. Edmonds appear in any way in the case? A. The appearance appears to be filed by Moyers and Edmonds, but the name of Gilbert Moyers appears on the margin of the docket as attorney of record.

Q. Please read the entries? A. February 20th, 1889, appearance filed by Moyers and Edmonds, Esqs. Opposite appears the name of Gilbert Moyers on the margin of the docket.

Q. Look at the case of Samuel Bagnell, administrator of Tenor Brayboy, No. 7448. Who appear to be the attorney or attorneys in the case of record? A. Gilbert Moyers appears as attorney of record.

Q. Does George B. Edmonds appear in anywise in that case? A. The name of George B. Edmonds does not appear anywhere in the record.

Q. Give the date of the entry of Moyers' appearance? A. March 14th, 1890.

Q. Who was the attorney before the commissioner of
238 claims? A. It appears to have been filed by Richard McAllister.

Q. Of what place? A. Washington, District of Columbia.

Q. Now, look at Mrs. Ann Hunt, administratrix of George N. Hunt, No. 6568. Who appears to have been the attorney? A. Gilbert Moyers.

Q. Does George B. Edmonds appear in the case? A. The name of George B. Edmonds does not appear anywhere on the record.

Q. What was the date of the appearance of Mr. Moyers? A. It appears that his appearance was filed the time he entered a call on the clerk of the House of Representatives on October 27th, 1888.

Cross-examination.

By Mr. TUCKER:

Q. In the case just referred to, that of Brayboy against the United States, I hand you a paper and ask you whether that is the appearance of Gilbert Moyers, attorney for the claimant, an original appearance? A. That is the original appearance of Gilbert Moyers in this case.

Q. What is its date? A. March 14th, 1890.

Q. Please read that paper to the examiner as it appears—the whole of it? A.—

In the Court of Claims, December Term, 1889–'90.

DANIEL W. BRAYBOY, Deceased,
vs.
UNITED STATES. } No. 7488. Congressional.

239 *Appearance.*

Notice is given of my appearance as attorney for the claimant in the above entitled cause.

GILBERT MOYERS, *Attorney.*

Q. Please state how much of that you just read is in print and how much is in writing? A. Only the caption and the number of the case is in writing.

Q. All the rest is in print? A. Yes, sir.

Q. Turn on the back please and say whether that is blank or whether on that paper appears the professional card of Gilbert Moyers printed? A. It does.

By Mr. BIRNEY:

Q. Turn to the record in the case of Thomas W. Russell against the United States, No. 4475.

(Witness looks at the docket.)

Q. Who appears to be the attorney of record in the Court of Claims? A. It appears that on May 28th, 1888, Gilbert Moyers filed an appearance and power of attorney. His name was copied on the record as attorney of record. It also appears on October 29th, 1889, a power of attorney was filed by P. E. Dye, Esq. His name was also entered on the docket of the case.

Q. Who filed the original petition. Please look at the
240 original petition in the Court of Claims and say?

Handing witness original petition.

A. The original petition was filed by P. E. Dye, Esq., of Washington, D. C.

Q. Who appears as original attorney before the commissioner of claims? A. It appears to have been filed by Enos Richmond.

Q. Who was the attorney who filed the briefs in this court? A. There are a good many briefs in this case. I can answer very readily by looking over the papers.

Q. My question was who filed the briefs? A. The briefs all appear to have been filed by P. E. Dye.

Q. Who filed the request for findings of fact? A. (Looking at the docket.) Filed by P. E. Dye.

Q. Who appears as attorney in the findings of fact by the court and what was the date of those findings? A. P. E. Dye, appears as attorney for the claimant in the findings of fact filed by the court and the same being filed on December 18th, 1893.

Q. Mr. Dye, as an attorney of this court you say? A. Yes, sir.

Q. Practicing law in Washington? A. Yes, sir.

Mr. TUCKER: This testimony of the witness with respect to the entry of Col. P. E. Dye as attorney of record in this case and the filing by him of various briefs is object- to as the answer of the defendant in this case admits the collection by him, the said defendant, of the amount appropriated to pay the judgment in this case.

241 By Mr. TUCKER:

Q. Mr. Taylor, you have on direct examination respecting this Russell case—Russell against The United States, No. 4475, testified that the docket shows an entry under date May 28th, 1898, of the

appearance of Gilbert Moyers, as attorney for the claimant, and the filing by him of a power of attorney I hand you a paper and ask whether that is the original entry of appearance that you have just referred to? A. It appears to be the original appearance.

Q. Kindly read that entry of appearance? A. In the court of claims. December term 1889. This is all wrong here. They have filed here an appearance with name of one case on the inside and the name of another case on the back.

Mr. TUCKER: Read it as it is.

A.—

In the Court of Claims, December Term, 1888.

MORGAN COXEN
vs.
THE UNITED STATES. } No. 4465, Congressional. Appearance.

Notice is hereby given of my appearance as attorney for the claimant in the above entitled cause.

MOYERS AND EDMONDS, *Attorneys.*

Q. Read the back—the endorsement on the back? A. 4475 Congressional. Court of Claims, Thomas Russell against the United States. Appearance filed by Moyers and Edmonds, attorneys for claimant, May 28th, 1888. J. R.

242 Q. Mr. Taylor, this paper that you have just referred to and read is in the files of the case of Russell against the United States, No. 4475, is it not? A. It is.

Q. I hand you now a paper which purports to be a power of attorney taken from the files in that case and ask you to describe that?

(Handing witness paper.)

A. It appears to be a power of attorney from Thomas W. Russell, of Clark county, Virginia, to George B. Edmonds of Washington, D. C., dated the 20th day of March, 1886. Witnessee, but not acknowledged before any officer. It was filed May 28th, 1888.

Q. Now, will you take these papers, Mr. Taylor, and find for me the entry of appearance of Gilbert Moyers and the power of attorney to him that you have just stated is docketed upon your docket. A. The power of attorney and the appearance first referred to May 28th, appears to be the appearance and the power of attorney just stated.

Q. Now, look at the docket, Mr. Taylor, and read the entries there and state what the relative position of the entry of Gilbert Moyers is to the entry of appearance? A. The record shows "May 28th, 1888, appearance power of attorney filed." The name of Gilbert Moyers is entered on the margin in the same hand writing.

By Mr. BIRNEY

Q. Do the papers show any action by Gilbert Moyers in the case or any action after the filing of the petition by anybody besides Mr. Dye? A. The claim appears to have been prosecuted
243 throughout by P. E. Dye, with the exception of one paper which is filed June 6th, 1890, by Gilbert Moyers, who made a call on the archives office of the War Department.

Mr. TUCKER: Question and answer objected to upon the ground that by the fourth paragraph of his answer the defendant admits having collected the judgment in the case just referred to that of Russell against The United States, No. 4475, which is included in the schedule attached to the bill of complaint.

Q. Now, look at the case of F. J. L. Roberts, No. 4711, and state who appears to have been the attorney of record in that case? A. The first appearance in the case was of June 28th, 1888, by G. W. Z. Black, and made a motion for call on the clerk of the House of Representatives. The next appears on November 8th, 1888, when Moyers and Edmonds filed an appearance.

Q. Any further appearance? A. No further appearance.

Q. Who was the attorney before the commission of claims?

Mr. TUCKER: Objected to as wholly immaterial.

A. G. W. Z. Black.

Q. And who was the attorney in the reference from Congress?

Mr. TUCKER: Same objection.

A. G. W. Z. Black.

Q. Who filed the petition in the Court of Claims? A. G. W. Z. Black.

Q. Who was the attorney who prepared the brief on loyalty
244 and on merits? A. G. W. Z. Black.

Q. And in the findings of fact?

Mr. TUCKER: Same objection.

A. In the findings Black appears for the claimant.

Q. Who took the testimony as attorney for the claimant? A. G. W. Z. Black appears for the claimant in the taking of testimony.

Q. Does anything appear to have been done in the case by Mr. Moyers or Mr. Edmonds other than what you have stated? A. It does not appear that Moyers and Edmonds did anything in the prosecution of the claim.

Mr. TUCKER: All the testimony of this witness relating to the claim of Roberts against The United States objected to on the ground that the defendant in his answer admits the collection of money appropriated to pay this claim and the testimony is therefore immaterial.

GEORGE W. TAYLOR.

Subscribed and signed by me this 14 day of May, 1900, for the witness by consent and agreement of counsel.

MASON N. RICHARDSON, *Examiner.*

Hereupon the further taking of testimony in this cause was adjourned until the next day Tuesday May 15th, 1900, at the hour of 2 o'clock p. m.

MASON N. RICHARDSON, *Examiner.*

245 WASHINGTON, D. C., *May 15th*, 1900—2 o'clock p. m.

Met pursuant to adjournment at the clerk's office of the Court of Claims, to take further testimony for and on behalf of the defendant:

Present: Same parties.

Whereupon GEORGE W. TAYLOR, heretofore sworn, was re-called, and testified as follows—

By Mr. BIRNEY:

Q. Turn now to the case of Ann Hunt, administrator of George F. Hunt, No. 6568, and state who was the attorney or attorneys who appeared of record in the case and when was the petition filed? A. Gilbert Moyers. He is the only attorney of record.

Q. He is the only attorney of record? A. Yes, sir.

Q. When was the petition filed? A. June 30th, 1890.

Q. When was the first appearance for action by Mr. Moyers in the case? A. October 27th, 1888, when he made a call on the clerk of the House of Representatives for the original papers in the case.

Q. Look now at the files and state who appeared to have been the attorneys in the case before the commissioners of claims.

246 A. Bartley and Jenner, and Adams and Speed.

Q. Does George B. Edmonds appear anywhere on the record as having been interested in the case? A. There is nothing on the record to show that George B. Edmonds was ever in the case.

Q. Does the record show any power of attorney to Mr. Moyers or to any one associated with him? A. It does not.

By Mr. TUCKER:

Q. Adams and Speed you have referred to as the attorneys—the original attorneys in this case were non-residents were they not? A. I do not know.

Q. Read the endorsement, if you please, on the paper in your hand taken from the jacket? A. "Adams and Speed, Vicksburg, Mississippi," appear on the paper just handed me.

Q. Is this motion for a call on the clerk of the House of Representatives the first indication that Gilbert Moyers was interested in this case? A. It is.

Q. That paper that I handed you and which purports to be such

a motion is on a printed blank used by Gilbert Moyers is it not? A. It is.

Q. And bears what date? A. Filed, November 17th, 1888.

247 By Mr. BIRNEY:

Q. Please turn to the record in the case of Evalina T. Beasley, widow of John P. or T. Beasley, afterwards prosecuted in the name of Samuel Black, administrator of John P. or T. Beasley, No. 1136 Congressional. Now look first at the files in the case and state who was the attorney who filed the petition before the commissioner of claims and when he filed it?

Mr. BIRNEY: Attorney for the defendant here states that the testimony as to this case is offered for the purpose of impeaching the verity of the schedule attached to the copy of the contract between George B. Edmonds and Gilbert Moyers and with knowledge of the fact that it does not appear in Complainant's Exhibit One attached to his bill of complaint.

Mr. TUCKER: In addition to the general objection heretofore interposed to the testimony of this witness, this question is objected to on the ground that the issue between the parties to this cause is as to the distribution of the fees in the cases described in Exhibit One of the bill of complaint and it does not appear that the case mentioned in the answer appears in that exhibit or is involved in any way in this suit.

Q. Now, Mr. Taylor, you can answer. A. The petition before the claims commission was filed by Gilbert Moyers.

Q. The date? A. The date of the filing of which does not appear, but was sworn to by Evalina T. Beasley, the 23rd day of November, 1872, before John Hillard, justice of the peace.

248 Q. Who was the attorney who took the testimony before the claims commission as appears from these files and when was it taken? A. It was taken by Gilbert Moyers.

Q. The date? A. December 24th, 1872, Valley Grove, Monroe county, Arkansas.

Q. Who filed the original petition in the Court of Claims? A. The original petition was filed March 12th 1888, by Leon D. Geneste.

Q. When was Gilbert Moyers substituted for Leon D. Geneste as attorney of record and under what conditions? A. On May 1, 1899, a motion of Gilbert Moyers to be substituted as attorney of record vice Leon D. Geneste, abandoning the case was allowed subject to the condition of the order on said motion, to wit: "That the rights of the heirs of Leon D. Geneste to share in the fees to be preserved, that he may be required to account therefor."

Q. Is there anything in the record of the case to show any connection that George B. Edmonds had with it? A. Nothing that I am able to see.

Q. When was the case allowed? A. February 17th, 1896.

Mr. TUCKER: The testimony of the witness relating to this claim is also objected to and at the hearing of the testimony of this relating thereto will ask that it be stricken out upon the further ground that the claim of Evalina T. Beasley, does not appear in the schedule attached to the partnership agreement between Edwards and Moyers of 1888.

249 By Mr. TUCKER:

Q. Mr. Taylor, where does it appear that this claimant Evalina T. Beasley is the widow of John T. Beasley? A. In the original petition filed March 12th, 1888, she states that she is the widow of John P. Beasley, deceased, which is sworn to before C. D. Dawson, notary public.

By Mr. BIRNEY:

Q. Please turn now to the cases of Wilson W. Williams, administrator of Roderick Williams, No. 4203 and 5158, and say who appears to have been the attorney for the claimant before the claims commission. A. Richard McAllister.

Q. When was the claim filed by him—in what year, if you cannot give the exact date. A. It is endorsed on the back of the petition "January 10th, 1873, all evidence is here and the case is submitted." That is the only date appearing on the paper.

Q. Who appears to have been the attorney of record in the Court of Claims? A. Gilbert Moyers.

Q. Look now at the power of attorney from the claimant in the cause and say to whom it was made and when? A. Power of attorney appears from Wilson Williams, administrator of R. Williams, deceased, of Oxford, Lafayette county, Mississippi, under date of 11th of January 1888, filed in the Court of Claims May 15th, 1888.

Q. Power of attorney to whom? A. To Gilbert Moyers.

250 Q. Does any other attorney appear of record in the prosecution of the case. A. No other attorney appears on the record in this case.

By Mr. TUCKER:

Q. The power of attorney in this Williams case is on a printed form is it not with the name of Gilbert Moyers in print contained in it? A. It is.

Q. Is there anything in the record to show how the original attorney, Richard McAllister, became disconnected with the case? A. It appears that Richard McAllister prosecuted the claim before the claims commission. That has nothing to do with the prosecution of the claim in this court.

Q. I hand you one of the papers contained in the files of this case purporting to be a petition of Wilson Williams addressed to Congress and relating to this claim and ask you to look at the endorsement thereon and state what member of Congress appears to have

presented that petition? A. Hon. J. B. Morgan of Mississippi—of third Mississippi.

Q. I hand you another paper taken from the files of this case, purporting to contain the testimony of Josiah Wilson and William M. Bolles, and ask you to state by what attorney that testimony seems to have been taken? A. It appears to have been taken by M. J. Baiden.

By Mr. BIRNEY:

Q. Turn now to the record on file in case No. 3898, George
251 Show against The United States, and state who appears to have been the attorney for the claimant before the commissioner of claims. A. G. W. Z. Black. (Witness looking at the original petition.)

Q. When was that claim filed before the commissioner of claims, if you can tell by anything that appears upon it? A. The only date that appears upon the papers is April 24th, 1872.

Q. Who filed the original petition in the Court of Claims when it was filed? (Witness looking at the docket.)

A. It was filed by G. W. Z. Black, January 6th, 1890.

Q. Who prepared and signed the briefs as attorney? A. G. W. Z. Black.

Q. Who is the attorney named in the findings of fact by the court and when were the findings made? A. The findings of fact, G. W. Z. Black appears for the claimant and they were filed May 22nd, 1893.

Q. And who took the depositions of the witnesses? A. G. W. Z. Black appears for the claimant and in all the depositions taken before this court.

Q. Does any other attorney, other than Mr. Black, appear to have taken any part in the case? A. G. W. Z. Black appears to have prosecuted the case from beginning to end in the Court of Claims. The only papers that I am able to find filed by any other person is a power of attorney from George Show of Shepherdstown, to George B. Edmonds, and filed in the Court of Claims May 7th, 1888, and appearance by Moyers and Edmonds filed May 7th, 1888.

252 Mr. TUCKER: All of the testimony of the witness relating to the claim of Show against The United States is objected to and at the hearing will move to strike the same out upon the ground that it is utterly immaterial who appears of record as attorney in the case in view of the admission of the defendant in his answer that he collected the money appropriated to pay this claim and paid his fee therefrom.

By Mr. TUCKER:

Q. Mr. Taylor, this power of attorney to George B. Edmonds dated February 17th, 1886, and filed May 7th, 1888, is on a printed

form is it not with the name of George B. Edmonds appearing in print on its face? A. Yes, sir.

Q. Now, will you please read the entry of appearance, the original entry of appearance which was filed May 7th, 1888 *say* that a copy of the same may be spread upon the record? A. Court of Claims. George Show against The United States. No. 3878, Congressional. We hereby enter our names as attorneys for the above named claimant. (Signed) Moyers and Edmonds."

Q. That was filed in the Court of Claims when? A. Filed in the Court of Claims May 7, 1888.

Q. That is the same date that the power of *power* was filed? A. Same date.

253 By Mr. BIRNEY:

Q. Do you know whose hand writing the notice of appearance is in? A. I do not know.

Q. Are you familiar with the hand-writing of Gilbert Moyers? A. I am.

Q. Is that paper in his hand-writing?

Mr. TUCKER: Object on the ground that no sufficient foundation has been laid for an expression of the witness' opinion as to whether the paper in question is in the hand writing of Gilbert Moyers?

Q. How have you become familiar with the handwriting of Mr. Moyers? A. By taking his acknowledgment to papers, being a notary public and from other papers filed in the Court of Claims, etc.

Q. He is an active practitioner before this court? A. He is.

Q. You have seen a great many papers signed by him? A. A great many.

Q. You are therefore familiar with his signature—with his handwriting? A. Yes, sir, very familiar with it.

Q. I will ask you whether that paper is in his handwriting—that appearance or not is in his handwriting?

Mr. TUCKER: Objected to as immaterial and incompetent, it being manifestly immaterial whether the paper in question is in the handwriting of one or the other of the two partners, Moyers or Edmonds.

A. It is not.

254 Q. Turn now to the record in the case of 4514, Congressional, of Christian Ubele, administrator of T. Ubele, deceased. Who appears to have prosecuted that case before the commissioner of claims? A. D. W. Stone, of Savannah, Georgia and W. Penn Clark of Washington, D. C.

Q. Who prosecuted it in this court? A. The claim appears to have been prosecuted from beginning to end by W. Penn Clark, whose name also appears in the findings of fact filed by the court on April 18th, 1892, as attorney for the claimant.

Q. What other *other* attorneys, if any, appear in any way by any papers in the files and how do they appear? A. The only other attor-

neys that appear in the case are as follows: On June 2, 1888, appearance as filed by Moyers and Edmonds, attorneys, with a power of attorney from Christian Ubele, of Savannah, Georgia, to George B. Edmonds, of Washington, D. C., dated 26th day of February, 1886, an appearance filed by F. P. Dewees, filed October 14th, 1893, and a motion to certify the findings of fact to Congress, signed by F. P. Dewees, attorney for claimant, filed January 31, 1894.

Q. Do the papers or the docket show any action by any other attorney than W. Penn Clark, other than the filing of the papers you have just mentioned? A. None whatever with the exception of the motion of F. P. Dewees to certify the findings to Congress.

Q. Do you know what his relation was *of* W. Penn Clark? A. I do not know.

255 Q. Look now at the appearance of Moyers and Edmonds, attorneys, of which you have spoken and say if the written portion thereof, being the signature, is in the handwriting of Mr. Moyers?

Mr. TUCKER: Objected to as immaterial and incompetent.

A. To my knowledge of Mr. Moyers' hand writing I should say that it was not in his hand writing.

Mr. TUCKER: Same objections are made to the testimony of the witness relating to the case of Christian Ubele, administrator, as were made to his testimony relating to the Show case and at the hearing will move to strike such testimony from the record.

By Mr. TUCKER:

Q. Now, if you please, Mr. Taylor, look at the original motion for the withdrawal of the papers and state in whose hand writing the signature is in attached to that motion and in whose hand writing the endorsement on the back thereof is in? A. I do not know.

Q. Is not the signature to the original motion in the hand writing of Gilbert Moyers? A. From my knowledge of Mr. Moyers' hand writing I should say that it was not.

By Mr. BIRNEY:

Q. Please look at the files and docket entries in case No. 1156, Congressional, being John Ehs against The United States and say who was the attorney for the claimant before the claims commission and when was the claim filed before that commission? A. It appears to have been filed by Gilbert Moyers March 12th, 1872.

256 Q. Who took the testimony before that commission as attorney for the claimant? A. It was taken by Gilbert Moyers.

Q. Who appears to have acted as attorney for the claimant in the Court of Claims? —. Gilbert Moyers prosecuted the claim before the Court of Claims.

Q. When was his appearance entered in the court and petition

filed? A. The appearance was filed June 30th, 1887, and the petition was filed by him March 28th, 1893.

Q. Does any other attorney appear to have taken any part in the case? A. No other attorney appears to have been in this case.

Q. What was the date of the findings of fact? A. December 7th, 1896.

By Mr. TUCKER:

Q. Mr. Taylor, the entry of appearance—the original entry of appearance is simply a printed form with the name of the claimant and the number of the case inserted in hand writing is it not? A. It is.

Q. And is evidently on a printed form used by Gilbert Moyers at the time? A. It is.

257 Q. And the original petition in the case consists of printed form with the name of the claimant, his residence, the amount of the claim, and the stores for which renumeration is asked filled in in handwriting is it not? A. Yes, sir.

By Mr. BIRNEY:

Q. Look now at the record and files—the docket and files in the case of John R. Hornbaker, No. 7950 Congressional and say who appeared to have been the attorneys in the claim before the commissioner of claims? A. Whittlesey and Willoughby of Alexandria, Virginia and Washington, D. C.

Q. In what year? A. Filed April 17th, 1871.

Q. When was the petition filed in this court and by whom? A. The petition was filed May 12th, 1894, by Gilbert Moyers.

Q. And who afterwards prosecuted the case? A. Gilbert Moyers.

Q. Does George B. Edmonds appear to have had anything to do with the case? A. The name of George B. Edmonds does not appear anywhere on the record or in any of the papers filed in the case.

By Mr. TUCKER:

Q. Look at this entry of appearance, Mr. Taylor, please and state when that was filed? A. Filed September 3rd, 1890.

Q. And in whose handwriting is it? A. I do not know.

258 Q. Is it in Gilbert Moyers' handwriting? A. From my knowledge of Gilbert Moyers' handwriting I should say that it was not.

Q. I hand you a motion for call on the C. S. archives taken from the files of the case and ask you by whom that motion was made and the date of it? A. It was made by Gilbert Moyers and filed October 30th, 1896.

Q. Is that in his handwriting? A. It is not in his handwriting.

GEORGE W. TAYLOR.

Subscribed and sworn to before me this 15 day of May, 1900.

MASON N. RICHARDSON, *Examiner.*

Hereupon the further taking of testimony in this cause was adjourned subject to notice.

MASON N. RICHARDSON, *Examiner.*

WASHINGTON, D. C., *May 17th*, 1900—3 o'clock p. m.

Met pursuant to agreement of counsel at the law offices of A. A. Birney, Esq., Mertz building, to take further testimony for and on behalf of the defendant.

Present: Same parties.

259 Whereupon CHRISTOPHER N. WILSON, a witness heretofore sworn, being recalled for further direct examination, testified as follows:

By Mr. BIRNEY:

Q. Mr. Wilson, in 1872–3 were you at any time engaged in the taking of testimony as commissioner in cases pending before the Southern Claims Commission? A. In both of those years; yes, sir.

Q. Where did you take such testimony as commissioner? A. Throughout the State of Mississippi and in north Louisiana.

Q. By whom were you appointed as such commissioner? A. By the president of the Southern Claims Commission. I think his name is Alders. I think so.

Q. Are you familiar with the case of Samuel Bagnell, administrator of Tenor Brayboy, which was before the Southern Claims Commission. A. Yes, sir. I know Mr. Bagnell personally. I took the testimony in the case of Brayboy.

Q. Have you seen the original files in the Court of Claims of that case? A. I have.

Q. Numbered 7448 on the Court of Claims docket? A. Yes, sir.

Q. In whose handwriting is the testimony in that case filed before the Southern Claims Commission? A. In my handwriting.

Q. Who took the testimony as attorney before you as com-
260 missioner on behalf of the claimant? A. John D. Beaird for Col. Moyers.

Q. You knew Mr. Beaird represented Col. Moyers did you? A. Yes, sir.

Q. The attorney of record at that time in that case seems to have been Richard McAllister. Did you know what relation he was to Col. Gilbert Moyers? A. I know that Col. Moyers took his entire business and he was associated with him in some manner. I don't know the particulars while he was in Mississippi, but afterwards Col. Moyers assumed the entire business.

Q. Do you recall the case of Wilson Williams, administrator of Roderick Williams in which Richard McAllister was also attorney before the commissioners? A. No, sir; I did not.

Q. Do you recall the case of Hattie E. Ladd? A. I think I took the testimony in that case. Her name was Hattie E. Black at the time.

Q. Do you recall who was the attorney appeared in that case to take the testimony? A. The same gentleman, John D. Beaird. He had charge of the Vicksburg office. Col. Moyers had a branch office at Vicksburg and he had charge of this branch office when I took this testimony.

Q. Have you any further information as to the connection between Col. Moyers and Richard McAllister at that time? A. I have not, sir.

Mr. TUCKER: All of the testimony of this witness at this session is objected to upon the ground of its immateriality and irrelevancy.

261 The rights and obligations of the decedent, George B. Edmonds, and the defendant being fixed and defined by the partnership agreement of 1888 and not by any precedent or connection of the defendant with cases described in those articles of partnership.

Cross examination.

By Mr. TUCKER:

The following questions are asked without waiving the above objection.

Q. You are now employed by Col. Moyers? A. I am, sir.

Q. And have been employed by him how long? A. Well, nearly two years.

Q. You are familiar with the class of cases, three of which you just testified concerning, known as the Bowman Act cases? A. I testified to but two.

Q. Two then, I thought you said three. A. I am familiar with them yes, sir.

Q. Is it not a fact that in the course of the prosecution of those cases various attorneys would become connected with them? A. Yes, sir, probably it might be so, sir.

Q. And would it not often happen that the claimants would make contracts with several attorneys and give powers of attorneys to several attorneys? A. Not that I know of. Not that I know of. I do know this, however, that the gentleman present here, Col. Moyers, had a persistency about him in these cases and wherever a claim was disallowed by the Southern Claims Commission he has kept in touch with the claimants and taken them up again when an opportunity offered.

262 Q. And has he not, as attorney of record in many of these cases, come in conflict with contracts and powers of attorney

of other attorneys? A. Not that I know of. Not in those two cases I have testified about.

Q. I am not speaking of those two cases, but in this class of cases generally. A. Well, there are times when other attorneys have become discouraged and given up that class of southern claims and in those cases other attorneys were employed no doubt—because in this class of cases years have gone by without appropriation and many attorneys became discouraged and threw up the cases and in those cases of that kind under the act other attorneys were employed.

Q. Do you know of any cases in which Col. Moyers became discouraged? A. No, sir, he had a pugnacity about him that was wonderful in matters of that kind and sometimes to his own detriment, I think.

CHRISTOPHER N. WILSON.

Subscribed and sworn to before me this 17th day of May, 1900.

MASON N. RICHARDSON, *Examiner.*

263 P. E. DYE, a witness heretofore sworn, being recalled for further direct examination, testified as follows:

By Mr. BIRNEY:

Q. Mr. Dye, you have been heretofore sworn in this case? A. I suppose this is the same case. I don't know—yes, sir.

Q. You have testified that you have been for a number of years an attorney in the prosecution of claims before the Court of Claims and the departments? A. Yes, sir.

Q. You are familiar with the case of James W. Russell No. 4475 on the Court of Claims docket? A. Yes, sir, I prosecuted it.

Q. Who was the attorney in that case, if you know? A. I was the attorney.

Q. During the whole of the case or a part of it? A. As far as I know all through it.

Q. And who collected the appropriation? A. I did.

Mr. TUCKER: This question and all similar questions which have for their object the adducing of testimony to show that some attorney other than the defendant collected the sums appropriated to pay the judgment in this case, is objected to upon the ground that the defendant by his answer has admitted that he collected the appropriation made to pay the judgment in this case. It is understood that this general objection shall apply to all questions having such testimony for their object.

264 Q. Did you receive the fee in the case? A. Yes, sir.

Q. To your knowledge did Col. Moyers have anything to do with the case? A. I do not know that he did. He did not certainly with me.

Q. Did he share in the fee? A. No, sir.

Q. Do you know of any connection that George B. Edmonds had with the case? A. I do not know anything about it.

Q. You never knew him as attorney in the case in any way? A. No, sir; I got the case from the claimant.

Cross-examination.

By Mr. TUCKER:

Q. Col. Dye, without waiving the objection heretofore made, I will ask you whether or not you are acquainted with the fact that in that case an appearance was entered for the claimant by Moyers and Edmonds? A. I did not know of that. I did not notice that it was ever done. You mean entered as attorney of record?

Q. Yes, sir. A. No, I never knew anything of the kind.

Q. Were you not acquainted with the fact that there is in the files of the Court of Claims in that case a power of attorney from the claimant to George B. Edmonds dated March 20th, 1886? A. I do not know anything about it.

265 Q. And what was the date of your contract and power of attorney with the claimant in that case? A. I cannot tell you. I have not looked at it in a long time. I could tell if I had my papers. My power of attorney was gotten from the father during his lifetime. I was in Berryville and he came to me and wanted me to prosecute the case and gave me a power of attorney. I cannot give the date of the power of attorney or contract for fees, and after his death his son was appointed the administrator to receive the money.

Q. What was the name of the son? A. I do not know, as I cannot tell just this moment. He is a druggist at—I don't think I can give the name, but it is some distance from Berryville. I have an impression that it is south on the pike from Berryville, Clark county, Virginia. If there are any other attorneys in the case I did not know it. There was no one interfered with me in it or ever claimed any right in it, to control it or manage it in any way.

P. E. DYE.

Subscribed and signed for the witness by me by consent and agreement of counsel this 17 day of May, 1900.

MASON N. RICHARDSON, *Examiner.*

GILBERT MOYERS, a witness of lawful age being first duly sworn, according to law for and on behalf of himself, as defendant, testified as follows:

By Mr. BIRNEY:

266 Q. You are the defendant in this case? A. Yes, sir, I am.

Q. What is your profession, and how long have you practiced it? A. I am a lawyer and have been practicing my profession over forty years.

Q. And for a number of years past where has been your practice? In what courts has been your practice? A. Principally in the Court of Claims in the last 15 or 20 years.

Q. There has been produced here and offered in evidence a duplicate of contract made between you and George B. Edmonds to which is attached a schedule or list of cases and testified to be in the handwriting of George B. Edmonds, deceased. Will you please state when you first saw that list or schedule of cases?

Mr. TUCKER: In so far as this question calls for testimony from this witness in any wise relating to conversations or transactions that he may have had with the deceased George B. Edmonds, it is objected to as in contravention of the statute.

A. I never saw it until after this controversy commenced.

Q. Explain what you mean by this controversy. Do you mean this litigation? A. I mean until the first—I was first informed that there was a contention made as to Edmonds' interests in certain cases involving what purported to be a schedule of cases transferred by Edmonds to me. No such schedule was ever furnished me at the time of signing the contract referred to.

267 Q. There has been produced on your behalf your duplicate of the contract in question. Was there ever a schedule attached to that duplicate? A. There was not.

Q. Your last answer refers to having heard some short time ago of this list or schedule. When did you first see it? A. The first information I had in regard to the matter was from Mr. Butterfield.

Q. About what time? A. I cannot give the dates. It was subsequent to the appropriation of 1899, known as the appropriation to pay what is known as the Bowman Act cases. What was termed as the omnibus bill.

Q. Then you first saw the list after that time? A. I never saw the list at all to examine it in fact. I never made any critical examination until recently.

Q. I call your attention now to the cases enumerated in the Complainant's Exhibit No. One attached to the bill and ask you to take them up in the order in which they are there given and state what was your connection with each case, and when that connection commenced and whether or not the case was one referred to in the contract between you and George B. Edmonds? A. In reply to that

question in connection with those cases I shall either have to refer to a memorandum I have made as a correct statement of the facts or go to the dockets of the individual cases. I will state I will govern myself by the memorandum which is absolutely truthful.

268 Mr. TUCKER: I object to the witness refreshing his recollection from any memorandum he has made or which he has unless it be shown when and under what circumstances such memorandum was made.

Q. Please state what memorandum you have and when you made it and from what material? A. I made it from the records of the Court of Claims and the files in each case.

Mr. TUCKER: I object to use of such memorandum for the purposes of refreshing the witness' memory. The best evidence of the contents of the files of the Court of Claims being the files of that court themselves and this objection is urged especially in view of the fact that two previous sessions of testimony in this case were taken at the Court of Claims and where all such files were readily procurable and which were used in the course of taking such testimony.

Hereupon after an examination of the memorandum produced by witness, counsel for the complainant refused to waive his objection to the witness testifying from said memorandum, and an adjournment was taken until the next day, Friday, May 18th, 1900, at the hour of 1 o'clock p. m. to meet at the Court of Claims.

MASON N. RICHARDSON, *Examiner.*

269 WASHINGTON, D. C., *May 18th*, 1900—1 o'clock p. m.

Met pursuant to adjournment at the clerk's office of the Court of Claims, to take further testimony for and on behalf of the defendant.

Present: Same parties.

Whereupon GILBERT MOYERS, a witness heretofore sworn, being recalled for further direct examination, testified as follows:

By Mr. BIRNEY:

Q. Have you now here present the original files of the Court of Claims in the cases to which you were interrogated on yesterday? A. I think they are all here.

Mr. TUCKER: Now, I want to put in a general objection here and do not want to have to repeat it. All questions propounded this witness, the object of which is to show the witness' connection with the claims set forth in Complainant's Exhibit One, are objected to

on the ground that they call for testimony in contravention of section 858 of the Revised Statutes of the United States under the circumstances of the present case and also because such testimony is irrelevant and immaterial to the issues between the parties to this cause; and all questions, the object of which is to show that the witness did not collect the money under the appropriations made to pay the claims described in Complainant's Exhibit No. One are objected to on the ground that the answer of the defendant
270 expressly admits the collection by him of the money to pay such claims. It is understood that this general objection shall extend to all questions which have for their object the bringing out of testimony such as has been mentioned in this objection.

Q. I now hand you the files of the Court of Claims in the case of Susan Merrill, 1681, Congressional, in which it was testified an appropriation was made to pay the amount found due by the Court of Claims. Please state whether that case was one involved in any way in the contract between you and George B. Edmonds? A. That case I had in charge ten years before I ever knew Edmonds. The original attorneys in the case were Pruett and Francis. In 1877 they transferred their business to me while it was pending before the commissioner of claims. The original petition was filed before the commissioner in which the claimant Susan Merrill makes Pruett and Francis her attorneys. I find nothing in the papers showing any connection with this case by Mr. Edmonds. Another thing I filed a power of attorney in this case——

Mr. TUCKER: So much of the witness' answer as relates to his connection with this case prior to the partnership agreement of 1888 is objected to as immaterial for the reason that such partnership agreement fixes the rights and liabilities of the parties thereto. With respect to the claims to which it refers.

WITNESS (continuing): Furthermore I find among the papers a power of attorney executed to me on the 16th day of November, 1887, which is here produced for inspection of counsel.
271 Q. Your answer may indirectly answer my question, but not directly. Aside from the records and files which you have in your hands, at this moment, have you any knowledge whether this was or was not a case in which George B. Edmonds had any interest? A. I am positive it was not, because I paid over to Francis the fee in the case. This draft or warrant in this case under the act of 1891 was sent direct to the claimant. Mr. Francis had, I think, other cases at Hot Springs, Arkansas besides this case in Mississippi. I furnished his travelling expenses to go down there and see that the fees were collected as the drafts had already been issued. He went down there and came back and reported to me and he said he would like to have the use of the money—my fees—my interest as well as his—my interest being ten per cent. and

he gave me his note for the amount. That note was paid recently under the act of 1899 out of the Bigley case of Pennsylvania in which he was interested.

Mr. TUCKER: No cross examination.

By Mr. BIRNEY:

Q. I now direct your attention to the case of T. W. Russell in which an award of $772, was made and ask you if that is a case which was covered by your agreement with Edmonds and further to state what you know about that case and who prosecuted it? A. Certainly not, for the reason that that case had been prosecuted before the commissioners and was being prosecuted under the Bowman act by Mr. Dye, who was the attorney of record, and who re-
272 ceived the fee. I was never recognized in connection with that case at all.

Q. Did you have any interest in the case or prosecute it in any way? A. No, sir.

Cross-examination.

By Mr. TUCKER:

Q. You stated that you never had any connection with this Russell case? A. No, with its prosecution as I recollect.

Q. How do you account for the entry of appearance of yourself and Edmonds in that case in the December term of the Court of Claims, 1888? A. My appearance was entered without my authority and without my knowledge as it was in a number of other cases by Mr. Edmonds himself or his representative.

Q. How do you account for the fact of your appearance being entered in that case on the Court of Claims docket? A. I have already answered that. My reply to the last question will answer that.

Q. Do you know anything of the power of attorney filed in that case by George D. Edmonds? A. No, sir, he must have filed it on his own responsibility, if there is one on file.

Q. How do you know that this Russell case was not included in your partnership agreement of 1888 with Edmonds? A. I know simply for this reason, I never got a schedule of the cases that he claims to have an interest in and do not know anything about
273 his schedule as I stated before.

Q. How do you know then which case that you and Edmonds were jointly interested in? A. Simply from the fact that certain cases on my record shows that he was interested in them.

Q. Independently of your record, how do you know which cases you and Mr. Edmonds were jointly interested in? A. I know only from my records.

By Mr. BIRNEY:

Q. Have you examined your records in this case of Thomas Russell? A. And the records in each individual case.

Q. Have you examined your records in this case of Thomas Russell to learn if Mr. Edmonds had any interest in it? A. Yes, sir. I have examined to the extent that I withdrew from its prosecution entirely, Mr. Edmonds having filed a power of attorney and appearance there to himself, individually and the power of attorney is here on *in* file with the papers in the case.

Q. Well, now, I call your attention to the case of J. L. Roberts, in which a finding was made for $395, and ask what connection you had, as attorney for the claimant, in the prosecution of that case and whether that is one which is covered by your agreement with Edmonds? A. G. W. Z. Black was the attorney, in that case, as I recollect, before the commissioners and in securing its reference to the court under the Bowman act. He attended to its prosecution in the court and secured the award and received the fee.

274 Q. You were not interested in it? A. Not in the slightest.

Q. To repeat a part of my question, was that a case in which Mr. Edmonds was in any wise interested under your agreement with him? A. Not that I am aware of.

Mr. TUCKER: No cross examination.

By Mr. BIRNEY:

Q. I now direct your attention to the case of George Show who got an -ward made of $695, and ask you if that is a case covered by your agreement with Edmonds and what part, if any, you took in the prosecution? A. Black was the attorney in that case, as I recollect it, before the commissioners and before the court; had it referred down. I had no connection with its prosecution and received no fee.

Q. Have you any knowledge of any interest that George B. Edmonds had in that case? A. None whatever.

By Mr. TUCKER:

Q. It appears that in that case of Show against The United States, the appearance of yourself and Edmonds was entered of record in the Court of Claims on May 7th, 1888. How do you account for that? A. That was done by Mr. Edmonds without my knowledge or consent or approval.

Q. Did you not know at that time that Edmonds had a
275 contract with the claimant dated, 1886? A. I did not. In fact I do not find that case on my dockets.

By Mr. BIRNEY:

Q. I direct your attention now to the case of C. Ubele, administrator, in which an award was made of $585. and ask you what connection, if any, you had with the prosecution of that case and

whether that was a case which was covered by your agreement with George B. Edmonds? A. The only knowledge I have in regard to that matter is that Edmonds entered an appearance in the case and purported to turn the case over to me, but I found that the case was prosecuted before the commissioners of claims by Judge W. Penn Clark, and he was prosecuting it in the court and hence I could not take any active part in it. The briefs were all filed by Mr. Clark, as shown by the record of the case. He took the additional testimony that was necessary to be taken and he received the fee. I have never realized one cent from this case. I never expected anything.

By Mr. TUCKER:

Q. This case then was not included in your partnership agreement of 1888 with Edmonds? A. I had no partnership agreement with Mr. Edmonds. I had a special agreement—simply a special part nership agreement, but no general. This case may have been—it was, I think, one of the cases that he claims to have turned over to me. I am quite positive about that. In fact here is a power of attorney to George B. Edmonds executed on the 26th day of February 1886, among the court files. That power of attorney was not
276 filed by me in the court. It was filed, I suppose, by Mr. Edmonds.

Q. Well, so far as your connection with this Ubele case is concerned is it not the same as your connection with the case of Show against The United States in which latter case the record shows that an appearance of yourself and Edmonds was filed? A. No, it is not the same because in that case it never found a place on my dockets. This case did.

Q. That is the only distinction you make between the two? A. A very material distinction and possibly the only one.

By Mr. BIRNEY:

Q. I now direct your attention to the case of H. L. Cate, being the first in Exhibit One to complainant's bill, and in which it was claimed that an award was made of $835. *Place* state if that case was or was not covered by your agreement with George B. Edmonds, and what part, if any, you took in the prosecution of it? A. I will state here once and for all that I never did know until, as I stated previously, what Mr. Edmonds claimed that he turned over to me. This Cate case was not his by any means. I find here a power of attorney executed to me on January 27th, 1888. I received the case direct from the claimant, on one of my blanks in the hand writing of one of my clerks. Furthermore I have to state that it was referred to court upon a blank filed by one of my clerks, which now I exhibit.

277 Q. At what time? A. It was referred to court when this petition was filed, February 4th, 1888. The endorsement on the back is in the hand writing of Thomas J. Healey, a clerk in my office.

Q. Did George B. Edmonds assume to have any interest in that case? A. Not the slightest in it. He was not instrumental in having it referred in any way as shown by the record.

By Mr. TUCKER:

Q. I show you a power of attorney from Henry T. Cate to George B. Edmonds in the last named case, dated the 25th day of February, 1886, and therefore antedating your power of attorney by two years, which power of attorney, at his death was found among his last effects. Do you still contend that Mr. Edmonds had no connection whatever with that case? A. Not so far as its prosecution was concerned or his turning it over to me. I know nothing about that power of attorney. It never came into my possession. I secured a power of attorney direct from the claimant.

Q. I also show you a contract in that case between the claimant and Mr. Edmonds dated the 25th of February, 1886, which it has been testified was found in his effects. Does that change your understanding of the matter? A. Not in the least. The contract never was transferred to me which would have been in all probability had he transferred the claim to me, that together with the power of attorney.

By Mr. BIRNEY:

278 Q. I now hand you the court files in the case of Richard Butler in which an award was made of $122. Please state what connection, if any, you had with that case and whether that is or is not a case covered by your agreement with George B. Edmonds?

Mr. TUCKER: That question so directly calls for testimony relating to a transaction with the deceased that I renew and repeat the objection heretofore made, that it is incompetent under section 858 of the Revised Statutes.

A. This case seems to have been referred to the court on a petition that I think was prepared by Mr. Edmonds, but the claim was prosecuted by me at the instance of a firm of attorneys in Georgia, who claimed to represent the claimant and to be entitled to one-half of the fee. I cannot say when I remitted for their half of the fee. I received a one-half which is usual for an attorney located in Washington. Now, whether or not Mr. Edmonds received that claim from this firm, I am not able to say, but I know that he took no interest in the case. These local attorneys attended to the business at their end of the line and I attended to it at this end of the line and I divided the fees with them. Those are the facts.

Q. Did you have any knowledge of Mr. Edmonds' contention of connection with it? A. No, sir. It is a small case. The claim was allowed for $122. I paid the Georgia firm $25. which was about one-half of the fee.

Q. What was the name of that firm do you recollect? A. If I had the jacket here I could tell you. The local attorney's name was

John S. Schley. (After looking over the papers.) I think I
279 remitted him by check. If I did I will make an exhibit to my deposition, properly marked, of the check.

By Mr. TUCKER:

Q. The appearance of Moyers and Edmonds seems to have been filed in the Court of Claims in the Butler case on March 27th, 1889. Do you know anything about that? A. No, I do not. Mr. Edmonds entered this appearance without my knowledge or approval as he did in a number of cases.

Q. It also appears from the Complainant's Exhibit No. 4 that Edmonds had a contract with this claimant dated in 1886. Do you know anything about that contract? A. I never had the benefit of any contract he took in that case.

Q. How much did you remit to the local attorney in this case? A. My memorandum shows $25.

Q. When did you remit? A. I cannot give the date. The time of settlement I can give by referring to the books.

Q. Have you your books here? A. No, sir, I have not got my letter books here, nor my check book. I will see if I have it and make it an exhibit.

Q. Independently of your books you do not recollect the amount you sent to the local attorney or when you sent it or the means by which you sent it, whether by check or otherwise? A. I would not be certain. I would not rely upon memory when I paid a thing by check.

Mr. BIRNEY: Witness here states that he will look among
280 his papers and produce the check by which he paid the amount, if he can find it.

WITNESS: I will state that the draft may possibly have been sent there and they remitted me the fee. I am not certain about them taking the $25. That was the amount that was paid though.

By Mr. BIRNEY:

Q. I now direct your attention to the case—the files and records in the case of Wilson Williams, administrator of the estate of Roderick Williams and ask you to state what connection you had with that case, when your connection commenced and whether that is a case covered by the agreement or in which Mr. Edmonds had any interest to your knowledge? A. To my knowledge Mr. Edmonds had no connection with this case. The original attorney in the case was Col. Richard McAllister, late of this city. The claim was presented to the commissioner by him. He was my Washington correspondent at that time and to him I sent a very large number of claims to be filed before the commissioners. Mr. Knutt fell heir to Col. McAllister's business, or at least was employed by the son of the colonel to represent his deceased father's interest in the prosecution of these claims. Mr. Knutt had this case referred to the Court of Claims as he did all of the McAllister cases.

Q. Have you the files before you there showing the reference? A. I have the files before me, but they do not show that fact, which I am cognizant of, being familiar with the business. He
281 filed an application to have all the McAllister cases referred down, some eight hundred or a thousand referred down at one time as the dockets here will show. I evidently had some connection with this case while it was pending before the commissioner of claims. Mr. Knutt withdrew in my favor and I pressed the prosecution of the claim and secured a finding which finally resulted in an appropriation.

Q. What interest had Mr. Edmonds, if any, in the case? A. None.

Mr. TUCKER: The last preceding questions and answers are objected to in so far as they purport to state what connection Mr. Edmonds had with this case, Mr. Edmonds being deceased and the testimony of the witness being incompetent under section 858 of the Revised Statutes.

WITNESS: A local attorney co-operated with me in the prosecution of this claim in the court and I paid him one-half of the fee realized. His name is Martin.

Q. And he lived where? A. He is dead now. He lived at Water Valley, Mississippi.

By Mr. TUCKER:

Q. When did you send Mr. Martin the money? A. I paid him a good deal of money, advanced him while the business was going on and then I paid his widow several hundred dollars since.

Q. When? A. In the last three or four months.

282 Q. By check? A. I think I paid her out of a fee down there. That is my recollection. A fee out of another case.

Q. Did you take a receipt from her? A. The attorney I think sent me a receipt.

Q. Will you produce that receipt if you have it? A. I will and make it an exhibit, if I can find it.

Mr. BIRNEY: How much was it?

A. $200.

Mr. TUCKER: In this little claim Mr. Edmonds seems to have had a contract with the administrator of the claimant dated October 16th, 1886, for a fee of fifty per cent. What do you know about that? A. I never saw the contract. He retained these things in his possession. I do not know anything about it.

Q. Your power of attorney in that case as appears from the records of the Court of Claims seems to be dated two years subsequent to Mr. Edmonds' power of attorney. Was not one of the reasons why you agreed with Mr. Edmonds to prosecute this case the fact that your powers of attorney conflicted? A. Not at all. I never knew of his power of attorney. Here is the record in the case.

Q. Did you have a contract for fees in this Williams case? A. I think I did.

Q. Where is it? A. It is probably in my files in my office.

Q. Will you produce that if you can? A. I will unless I sent it down to the local attorney.

283 Q. If you sent it down to the local attorney would you not have a letter press copy of your letter of transmittal? A. Certainly.

Q. Will you produce that? A. Yes, sir, I will look it up.

By Mr. BIRNEY:

Q. I now hand you the files in the case of S. Bagnell, administrator of Tenor Brayboy. No. 7448 and ask you what connection you had with that case, when your connection commenced and what part you took in its prosecution? A. That case I had in charge before I ever knew a man by the name of Edmonds, and before the commissioners filed it through Col. McAllister and here is the evidence before me and of the files that the testimony was taken before C. N. Wilson, who testified here yesterday. John D. Beaird, my clerk at Vicksburg, Mississippi, at that time when I had an office there, appeared to examine the witnesses. That was in 1873, in the month of May. I certainly prosecuted that claim from the filing of it before the commissioners in 1871 or '2 up to its final allowance, settlement and payment.

Q. What knowledge have you of any connection that George B. Edmonds had with it? A. He had none—no connection whatever, that is so far as the prosecution was concerned.

Mr. TUCKER: Objected to as incompetent under the statute.

284 A. It was my case all the time.

Q. Was that case covered in any way by the contract between you and Mr. Edmonds?

Mr. TUCKER: Same objection.

A. Clearly not.

By Mr. TUCKER:

Q. Where is your contract with the claimant in that case? A. It is on file, probably in my office.

Q. Will you produce that? A. If I can produce that I will. Furthermore I will state that the original petition before the commissioners of claims is in the handwriting of the clerk who had charge of my office in Vicksburg, Mississippi, at the time.

Q. Where is the power of attorney in that case? A. The power of attorney is in the petition that was filed before the commissioner of claims by Richard McAllister through me.

Q. Where is the power of attorney to prosecute the claim in the Court of Claims? A. My power of attorney was embraced—I filed it through him. I do not know whether I have a power of attorney on file. It is not necessary to file a power of attorney in the Court of Claims except where the attorney swears to the petition.

Q. Have you a power of attorney from the claimant in that case?
A. I cannot tell you.

285 Q. Will you produce it if you have it? A. Yes, sir.

Q. Mr. Edmonds seems to have had a contract for a fee in that case of fifty per cent. dated May 4th, 1886. Was not that one of the reasons which induced you to enter into this partnership agreement referred to in this case? A. Why certainly not. I had this case long before that. I never knew of that agreement until you exhibit- it just now.

By Mr. BIRNEY:

Q. I hand you now the files in the case of Ann Hunt, administratrix, in which it is said that an award was made of $19,445, and ask you to state what connection you had with that case and when your connection commenced. A. That case I received direct from Mrs. Hunt.

Q. At what time? A. When I first commenced the prosecution of it before Congress and got it referred to the court. I was to pay all the expenses and had a contract for fifty per cent. Mrs. Hunt was at the time the administratrix of George F. Hunt, who was living when the property was taken and whose loyalty had to be proven.

Q. When did you begin its prosecution? A. I commenced the prosecution of that claim away back in 1887. I have now before me the docket entries in the case of George F. Hunt.

Mr. TUCKER: Do you refer to your dockets?

A. Yes, sir.

Mr. TUCKER: I object to the witness reading, or referring to his private entries upon the ground that they are not competent

286 evidence as against the complainant in this case, who is the representative of the deceased George B. Edmonds, such entries being entries in the interest of the defendant.

A. These entries are narrative facts.

Q. Was that docket kept regularly by you in the course of your business? A. By my clerks.

Mr. TUCKER: Objected to.

A. I keep a diary of every day's transactions in my office, of all papers filed and where they are filed and those entries are transferred to the dockets of that case.

Mr. TUCKER: Objected to also on the ground that the books are not books of original entries.

A. I had the case as early as 1887. I secured its reference to the court in 1888.

Q. What interest, if any, did George B. Edmonds have in that case so far as you have any knowledge or information?

Mr. TUCKER: Objected to as incompetent under the statute.

A. Not one cent of it.

Q. Was it covered or included in your contract with him? A. Certainly not.

By Mr. TUCKER:

Q. When did your connection with this case begin? A. It commenced in 1887.

Q. Where is your contract with the complainant? A. I
287 certainly did have a contract with the administrator which is now—he is the son of George F. Hunt.

Q. Where is your power of attorney? A. The administratrix being dead.

Q. Where is your power of attorney in that case? A. The power of attorney may be in my office. It may be here on file in this case. I am looking for it now. I rarely file a power of attorney except where I myself swear to the petition. The rules require a power of attorney in cases where the attorney swears to a petition. In this case the administratrix swore to the petition.

Q. You say it is over in your office? A. I think it is. I will look it up, Mr. Tucker.

Q. Your connection with this case began in 1887? A. Yes, sir.

Q. Among Mr. Edmonds' effects appears to have been a contract with Mrs. Ann Hunt, dated June 1st, 1886, a letter addressed to Mr. Edmonds by H. E. Newton on behalf of Mrs. Hunt May 7th, 1886, and a letter addressed to Mr. Edmonds by H. E. Newton on behalf of Mrs. Hunt, June 1st. 1886, Mr. Newton stating in his letters that he was a connection of hers by marriage. Did you know anything of Mr. Edmonds' connection with this case at the date of your partnership agreement in 1888? A. Certainly not. Those papers I never heard of before until you produce them now.

Q. Mr. Edmonds' connection with this case, his contract and power of attorney seem to have antedated your connection with the case by at least one year. Was not that one of the reasons which induced you to make that partnership agreement in reference to this case?

288 Mr. BIRNEY: Objected to, there being no evidence of a power of attorney to George B. Edmonds.

Mr. TUCKER: Counsel for the complainant calls attention to the endorsement of which has been testified was in Mr. Edmonds' handwriting reading as follows: "June 5th, 1886, received—returned P/A T/A and C executed."

A. I have no evidence that Mr. Edmonds' contracts or power of attorney induced my employment in this case and certainly could not exercise any influence upon me because I never knew of anything of the kind. Mrs. Hunt sent this case to me as I can show by correspondence which I will produce and make exhibit to my deposition and there is nothing in the record to show that Mr. Edmonds had anything to do with it.

Q. Is there anything in the files of the Court of Claims in this

case to show that you ever entered a formal appearance as attorney of record? A. By reference to the docket I can tell you.

Q. Examine the original papers please? A. I do not know whether that will show, that may have been lost or mislaid. The docket is the best evidence of that. (After examination of the paper.) I find, however, upon careful examination of the papers that there is nothing whatever in the record to show Mr. Edmonds' connection with this case, directly or remotely.

Mr. BIRNEY:

Q. What is the practice of the Court of Claims as to entering appearance of an attorney, when he files the original petition?
289 A. That is an appearance.

Q. In such case is any written appearance entered? A. It is not necessary.

Q. I now hand you the files in the case of Mrs. Hattie E. Ladd, formerly, Hattie E. Black, No. 8349, in which it is said an award was made of $985, and ask you to state what connection you had with that case and when your employment in it began? A. This claim was originally mine. I filed it through Col. Richard McAllister.

Q. In what year? A. Before the commissioner of claims in 1871–2. My docket shows that I prosecuted this claim through Richard McAllister.

Mr. TUCKER: The statement of the witness as to the contents of his docket is objected to as incompetent upon the ground above stated.

A. As attorney of record.

Q. Does the record before you, the official record of the Court of Claims show the same fact? A. It shows the application to take testimony made by Richard McAllister. That was in May 23rd, 1877, I think. The original petition seems to be missing from the files. I do not find it. There was a power of attorney among the papers filed by Edmonds. I cannot determine in whose handwriting the endorsement is on the said power of attorney, but my impression is it is in the handwriting of Mr. Edmonds.

The power of attorney is to him individually and it was executed, or it was signed and witnessed on the 2–th day of April, 1886.

Q. Is that a case which was covered by your contract or
290 agreement with Edmonds? A. No, sir.

Mr. TUCKER: I object to the testimony of the witness as incompetent under the statute.

A. No, because I had it before.

Q. Do you know of any interest which Mr. Edmonds had in it except from such information as you get from that power of attorney? A. None at all. It was never turned over to me by him. The fact is it was my case all the time.

By Mr. TUCKER:

Q. Was there ever any agreements turned over to you in any of the Edmonds cases? A. I don't think I have any of the agreements of Mr. Edmonds at all. Perhaps I have and perhaps I have not. I cannot say unless I go through all my agreements.

Q. Why do you say that you had this Ladd case originally? A. Because I was attending to it before the commissioner of claims. I sent it on to Col. McAllister.

Q. Is there anything on the record to show that you appeared in the case before the commissioner? A. The record will show Mr. McAllister.

Q. And you claim to have inherited the case from McAllister? A. He inherited it from me. I gave it to him to prosecute.

Q. What is there in the record to show that you appeared before the commissioners? A. Nothing at all because I did not ap-
291 pear. I employed him as the local attorney here in Washington. I sent him hundreds of claims.

Q. Have you any evidence to show his employment by you in this case? A. Nothing but the handwriting in the papers. The petition will show, but it cannot be found.

Q. Have you any contract with the claimant in the case? A. Yes, sir, I had a contract and settled upon the basis of that contract.

Q. Where is the contract? A. It is in my safe unless I surrendered it. I will state right here once and for all. It is not an unusual thing when I settle with a client to return the contract, and especially where there is an administrator, so that they can use that contract in settling up the affairs of the estate as a voucher. If I have this contract I will produce it.

Q. Will you produce any receipt for this contract if you have turned it over to the administrator or if you have got any letter of transmittal of the contract. A. Anything I have nearing upon the subject I will produce and make an exhibit to my deposition.

Q. Among Mr. Edmonds' effects appears to be a contract signed by Hattie E. Ladd, dated April 28th, 1886, and also a letter from her apparently written before the execution of that contract. Do you know anything about those? A. No, I never heard of them before.

By Mr. BIRNEY:

292 Q. Look now at the case of William R. Wellborn, No. 4196, Congressional, and state what is your connection with that case and when it commenced? A. That case was originally filed by George Taylor.

Q. In what year? A. Late of this city. Early in the 70's. He turned over his business to me. Just the date of the contract between him and I I cannot give, but I have the contract, I think, in my safe at my office. Edmonds seems to have had something to do

with this case, getting it referred down to the court, but the local attorneys were Foster and Butler, of Madison, Georgia. I paid them on the collection of this claim one-half of my fee as such local attorneys.

Q. Was that a case covered by your contract with George B. Edmonds?

Mr. TUCKER: Objected to as incompetent under the statute.

A. I do not see how it could be.

Q. From whom did you obtain it? A. Well, it would come under the general transfer from Taylor to me ordinarily, but the only attorneys I had any correspondence in regard to it was this firm down in Georgia that I have mentioned and here are numerous letters from them. The firm consists of Foster and Butler, Madison, Georgia. Here is a letter dated May 22nd, 1899.

Mr. TUCKER: Objected to as hearsay testimony.

WITNESS: The amount allowed is $250. Of this amount $100. went to Foster and Butler I suppose and $50. to ourselves and $100. to our client. That is my recollection. I will make an exhibit of the settlement of that case. I paid them one-half of the fee, whatever it was.

293 Mr. TUCKER: All statements of the witness with respect to the payment of the local attorneys in this case are objected to upon the ground that they are such payments that are in no wise binding upon the complainant, the administrator in this case.

Mr. TUCKER: No cross examination.

By Mr. BIRNEY:

Q. I show you the files in the case of Josiah Gall, No. 6827, and ask you what was your connection with that case and when it commenced? A. This claim was referred to the court in February 1889, and there is nothing among the papers that I find showing Edmonds' connection with this case. Now do I find any power of attorney to myself. Permit me to correct that, I find in further referring to the papers that there is an appearance filed by Moyers and Edmonds in February 20th, 1889. That appearance is one of my blanks used for that purpose and my name is erased and Moyers and Edmonds, attorneys, written in by some one unknown to me. It is not in my hand writing neither is it in the hand writing of any of my clerks and I will examine my docket as to that case and see if there is anything on the docket to show the filing of that appearance and if so, it must have been filed through my office.

Mr. TUCKER: The entries of the dockets of the clerks are objected to as incompetent to in any wise bind or effect the complainant's rights in this case.

A. My dockets show the appearance was filed. It must have been

through my office by some one. My impression is I received that from Mr. Edmonds.

294 Mr. TUCKER: No cross examination.

By Mr. BIRNEY:

Q. I show you now the official files in the case of John Ehs, No. 1156 and ask you to state what connection you had with that case and when that connection commenced? A. This is one of my original claims to the best of my recollection, before the Southern Claims Commission and I at all times looked after its prosecution independent and without regard to Mr. Edmonds. I never knew of his connection with the case to my recollection. I find that the original petition to the commissioner of claims was executed by the claimant on the 2nd day of March, 1872, making me the attorney of record. "Gilbert Moyers of Memphis, Tennessee, is hereby appointed my attorney." So I had the claim from that date until this date.

Q. Have you ever received any fee in the case? A. No, sir.

Q. Is that one of the cases covered in any way by the contract between you and George B. Edmonds? A. No, sir, it could not be because I had it before I knew Mr. Edmonds.

Mr. TUCKER: Objected to as incompetent under the statute.

By Mr. TUCKER:

Q. Where is your authority to prosecute this claim in the Court of Claims? A. The original power of attorney is sufficient until revoked.

295 Q. Where is your original power of attorney to prosecute the claim before the Southern Claims Commission? A. Right here in the petition. I just read it.

Q. Where is your fee agreement in this case? A. My fee agreement was lost or mislaid and I was compelled to make an affidavit as to its loss and what it provided for and also had to take affidavits as to what my services were reasonably worth.

Q. What was the date of the fee agreement? A. It was file- in the probate court down there. I cannot give the date of it. About the time I began the prosecution of the case.

Q. About the time you made the original petition in 1872 was that the date? A. Yes, sir.

Q. You stated you have not received the fee in the Ehs' case. Did you carry the case through the Treasury Department for settlement? A. The draft went direct to the claimant. Direct to the administrator and I relied upon his honesty and sent it to him. I am not certain now which. The administrator is Col. Hamilton, residing at Jackson, Mississippi. He is here in the city now, so I was advised yesterday.

Mr. TUCKER: The testimony of the witness with respect to his

failure—the statement of the witness that he has collected nothing from the Ehs case is objected to as in direct conflict with the admission in his answer that he collected the appropriation to pay this claim and at the hearing will move that such testimony be stricken out.

Mr. TUCKER: No cross examination.

296 By Mr. BIRNEY:

Q. I show you now the court files in the case of James Harding, administrator of J. H. Maury, deceased, and ask you to state what connection you had with that case, and when your employment commenced? A. There is nothing in the papers in this case showing Mr. Edmonds' connection with it, directly or otherwise. I had this claim referred to the court.

Q. When? State the date? A. 1890. It does not appear that I ever filed a power of attorney before the court.

Q. State when your connection with the case commenced? A. I do not find anything definite on that point, but it must have commenced prior to 1890 because I had the case referred down to the court.

Q. Can you state whether that case is one covered in any way by the contract between you and George B. Edmonds?

Mr. TUCKER: Objected to as incompetent under the statute.

A. It is not. I never knew Mr. Edmonds' connection with that case, that I can recall. There is nothing on my dockets to show that he had any claim to it or among the papers.

Mr. TUCKER: No cross examination.

By Mr. BIRNEY:

Q. I show you now the court files in the case of N. K. Thornton in which an award of $670. was said to have been made. When did your connection with that case commence, and who
297 prosecuted it as attorney? A. I find this claim was referred to the court by the committee on war claims in February 1889. I was not the attorney before the commissioner of claims nor did I have anything to do with the prosecution of the claim while there. This claim would seem to have come into my possession through Mr. Edmonds. I judge so more from the entries on my dockets than from any papers that appear in the case. There is no power of attorney to him nor anything among the papers that indicate that he had the case, except an appearance endorsed, I think, in his handwriting. I will not be positive as to that, in March, 1889. That is all.

Mr. TUCKER: No cross examination.

By Mr. BIRNEY:

Q. I show you now the court files in the case of John R. Hornbaker, in which $330. was said to have been awarded. Please state when your connection with that commenced and whether George B. Edmonds had any interest in the case so far as you know? A. This claim I received from Mr. Graham.

Q. Of what place? A. Harper's Ferry, Virginia. I find nothing in the papers to show any connection that Mr. Edmonds had with the case.

Q. When did your employment begin? A. My employment began in 1889, I think. That is my recollection.

Q. And you were employed by Mr. Graham you say? A.
298 Mr. Graham was the man who sent me the case. There is no power of attorney in their to me.

Q. What knowledge have you of any connection of George B. Edmonds with that claim?

Mr. TUCKER: Objected to as incompetent under the statute.

A. I have no knowledge of his connection with the case.

Q. Is it a case which was covered by your contract with him which is in evidence?

Mr. TUCKER: Same objection.

A. Nothing in the papers to indicate that I received the case from him of that he had anything to do with it.

Q. Aside from any papers, have you any knowledge that he had any connection with it? A. None whatever.

By Mr. TUCKER:

Q. Mr. Edmonds' connection with this claim seems, from the papers found among the effects, seems to have begun in February or March, 1886. Were you acquainted with that fact?

Mr. BIRNEY: I object to the question as it involves a statement which is not proven.

A. No, sir.

Q. Your appearance seems to have been first entered in the Hornbaker case September 3rd, 1890. Is that correct? A. I suppose it is.

Q. Have you your contract with the claimant in that case? A. I haven't any contract with him at all. I can look to see if there is one.

299 Q. And will you produce it? A. I will if I have it.

Q. And also the power of attorney? A. I will make a memorandum of it.

By Mr. BIRNEY:

Q. I show you now the papers in the court—the court files in the case of M. C. Baylor, No. 3894, and ask you to look at that and state

who was the attorney of record in that case from the beginning to the end and whether you have any knowledge of the case, whether you had anything to do with it?

Mr. TUCKER: Objected to as the witness has admitted that by his answer to have collected the fee.

A. G. W. Z. Black, of this city, seems to have been the attorney all the way through, except I notice here a power of attorney filed by Mr. Edmonds on November 7th, 1888, signed March 11, 1886. Aside from that all the papers indicate that Mr. Black was the attorney all the way through.

Q. Did you take any part in the prosecution of that case at any time? A. None whatever.

Q. Did you collect any part of the appropriation? A. No, sir.

Q. Or get any part of the fee? A. No, sir; Mr. Black was the attorney before the commissioner of claims.

Q. In 1872? A. Yes, sir, in 1872.

300 Q. Did you have anything or ever know anything about that case before the present? A. No, sir. I do not see that I had any connection with it whatever. I have not it on my dockets.

Q. Did you have any knowledge of it except from these files now? A. No, sir.

Mr. TUCKER: No cross examination.

By Mr. BIRNEY:

Q. I show you now fules court files in the case of Joel Johnson, administrator of R. W. Johnson, erroneously stated in Complainant's Exhibit No. One under the name of R. M. Johnson, and ask you what has been your connection with that case and when your connection commenced and under what circumstances? A. I filed the appearance in this case in the Court of Claims in June 1890. The case was referred to the court in February 1889.

Q. Did you thereafter prosecute it? A. Yes, sir, steadily.

Q. What connection, if any, had George B. Edmonds to that case of your knowledge? A. I do not see anything in the papers disclosing his connection to the case.

Q. Have you any knowledge that he had any connection with it? A. I cannot recollect any now.

Q. Can you say whether that was a case covered in your agreement with him or not?

Mr. TUCKER: Objected to as incompetent under the statute.

A. I think not. I filed an appearance in the case on June
301 25 1890. I do not see his name connected with the case in any way. Neither does my docket show that he had any connection with the case.

Mr. TUCKER: The last statement of this witness objected to as incompetent.

A. I am prosecuting that claim in connection with J. W. Lawrence, a lawyer at Fayetteville, North Carolina, on an agreement to divide the fees equally with him which will indicate that I must have received the case from him.

Q. Can you now state whether that is a fact, that you received the case from him? A. That is my impression. I will not state the fact without seeing the papers. That is all I know about it, what the papers show and my docket.

By Mr. TUCKER:

Q. Where is the contract with the claimant in that case? A. If I ever had a contract it is on file with my other contracts in my safe.

Q. Will you produce it? A. I will look it up and produce it.

Q. If you have a power of attorney in the case will you produce that? A. There don't seem to be any power of attorney in the case. There never has been any petition executed before the Court of Claims, I don't think. I will look to be positive about that. (After looking over the papers) There is no petition—no petition has ever been filed in the court. This case has not progressed to a hearing on the jurisdictional question of loyalty.

302 Mr. BIRNEY: Then it has not been decided by the Court of Claims?

A. No, sir.

Mr. BIRNEY: And consequently you have received no fee and collected no appropriation?

A. No, sir, the case is not settled.

By Mr. BIRNEY:

Q. You have stated that you have been engaged in the prosecution of claims for a long number of years. Can you approximate the number of claims that you have had under prosecution through the Court of Claims?

Mr. TUCKER: Objected to as immaterial and irrelevant.

A. I can only make an approximate estimate, and that might be quite uncertain. Possibly three or four thousand.

Q. There has been offered in evidence here the record of a verdict of a jury upon the inquisition in the case of George B. Edmonds, charging him with being of unsound mind. Please state what knowledge, if any, you had of that proceeding.

Mr. TUCKER: Objected to as incompetent and immaterial, the verdict of the jury in question being binding upon the witness, whether he had actual knowledge of the same or not.

A. The first intimation I had of anything of the kind was during the progress of this cause.

Q. Did you have any knowledge or information of it in 1891?

Mr. TUCKER: Same objection.

303 A. I certainly did not. I regarded Mr. Edmonds in my dealings with him as of sound mind as he was when he made the contract of 1888. I could see no difference perceptibly.

Mr. TUCKER: The last answer objected to as incompetent under the statute.

Q. Were you ever informed by any person that he was in any wise unfit to prosecute business?

Mr. TUCKER: Objected to.

A. No, sir; nor did I suspect anything of the kind.

Mr. TUCKER: Objected to as calling for hearsay testimony.

Mr. TUCKER: Notice is given that at the hearing it will be moved to strike out the whole of the deposition of this witness relating to his professional connection with the cases or claims referred to in his deposition and relating to his association or connection with George B. Edmonds, deceased, in the prosecution of such cases or the fact that he was not so connected with Mr. Edmonds in the prosecution of such cases upon the ground that such testimony is in contravention of section 858 of the Revised Statutes and is also wholly immaterial to the issues between the parties to this cause.

GILBERT MOYERS.

Subscribed and sworn to before me this 18 day of May, 1900.

MASON N. RICHARDSON, *Examiner.*

304 Hereupon the further taking of testimony in this cause was adjourned until Monday May 21st, 1900, at the hour of 2 o'clock p. m.

MASON N. RICHARDSON, *Examiner.*

WASHINGTON, D. C., *May 21st*, 1900—2 o'clock p. m.

Met pursuant to adjournment at the law offices of Messrs. Birney and Woodard, Mertz building, to take further testimony for and on behalf of the defendant.

Present: Same parties.

Whereupon G. W. Z. BLACK, a witness of lawful age being first duly sworn according to law for and on behalf of the defendant, testified as follows:

By Mr. BIRNEY:

Q. Please state your profession and place of residence? A. Lawyer. My place of residence—city residence is 1425 New York avenue.

Q. Have you in your practice of the law conducted cases before the Court of Claims? A. I have.

Q. Has that been your principal line of business? A. For twenty odd years, yes, sir.

Q. I now show you the files of the Court of Claims in the case of Moses C. Baylor, against The United States in which you
305 appear from the files to have been the attorney and ask you what your connection with that case was, who collected the appropriation and who received the fee?

Mr. TUCKER: Objected to on the ground that the defendant by his answer has stated that he collected the money appropriated to pay this claim and received the fee paid by the claimant therein.

A. I was attorney for the claimant and prosecuted this claim and received the fees for the same.

Q. Did you know of any connection that Gilbert Moyers had with the case?

Mr. TUCKER: Same objection.

A. I do not know and I am not aware that anybody had any connection with the case except myself.

Q. I now show you the files of the Court of Claims in the case of Joseph L. Roberts against The United States in which you also appear to have been the attorney and ask you what was your connection with that case, who collected the appropriation and received the fees?

Mr. TUCKER: Same objection.

A. I was the attorney and prosecuted the claim and received the fees.

Q. You collected the appropriation? A. Yes, sir.

Q. Did Gilbert Moyers have any connection with the case that you are aware of? A. Not to my knowledge.

Q. He did not share in the fee? A. He did not.

Q. I now show you the files of the Court of Claims in the case of George Show against The United States, No. 3898, Congres-
306 sional, in which you appear to have been the attorney and ask you what was your connection with that case, who collected the appropriation and who received the fee?

Mr. TUCKER: Same objection.

A. I was the attorney and collected the appropriation as you call it and received the fees in the case.

Q. Did Gilbert Moyers have anything to do with that case to your knowledge? A. Not to my knowledge.

Q. Did he receive any part of the fees? A. Not to my knowledge he did not.

Q. What knowledge had you, if any, of the connection, if there

was any connection, of George B. Edmonds with any one of the cases I referred to?

Mr. TUCKER: Same objection.

A. I was not aware that he had any connection with any of those cases.

Mr. TUCKER: For the reasons above stated it will be moved to strike out the whole of the deposition of this witness.

GILBERT MOYERS, a witness heretofore sworn for and on behalf of himself, being recalled, testified as follows:

By Mr. BIRNEY:

Q. At your last examination you were requested by Mr. Tucker to look among your files and to produce any correspondence or powers of attorney or agreements which you might have in certain
307 cases which he mentioned. Among them was the case of S. Bagnell, administrator of Tenor Brayboy. Have you here present any of your correspondence in that case? A. I have.

(Witness here produces two letters.)

Q. Can you state upon looking at those papers any endorsements which they bear. What became of the fee agreement which you had? A. I can. The endorsement on one of the papers. The endorsement on the letter of April 8th, 1892, is to the following effect. "Send the agreement to Bagnell, administrator." I did this as I did in almost every case in order that the administrator might use the fee agreement in a settlement of his accounts as such administrator.

Mr. BIRNEY: The letters are here produced and tendered for the inspection of counsel on the other side, the same being dated——

A. Letter dated April 8th, 1892, the endorsement being settled at Washington, April 8th, 1899. The letter of 1892 I offer in evidence to show that my correspondence was direct to Mr. Bagnell and he employed me. Also I make exhibit to my deposition of one from Mr. Bagnell dated June 2nd, 1892.

Q. You were also asked concerning the case of Wilson Williams, administrator of Roderick Williams, deceased. Please state you now have here a letter from Wilson Williams prior to his death? A. I hold in my hands a letter from Wilson Williams to date August 2nd, 1888, in which he writes me "I send you the power of attorney."

Mr. BIRNEY: The letters are offered in evidence as Defendant's Exhibit No. —.

308 Q. Did you have a local attorney at Water Valley, Mississippi in the Wilson Williams case and if so who was he and

produce any correspondence that you may have had with him? A. I did and his name was H. K. Martin. He had been a judge in one of the courts here. He was a prominent lawyer. To verify this fact I make an exhibit of a letter from him of October 29th, 1894.

Mr. BIRNEY: That letter is offered in evidence as Exhibit No. —.

Q. You were asked the other day for the fee agreement in that case. Please state now what you did with the fee agreement and produce any contract or memorandum or letter you may have on the subject? A. I hold in my hand a letter written by me and addressed to W. B. Porter, Esq., cashier of the Merchants and Farmers Bank of Oxford, Mississippi, in which I enclosed my fee agreement.

Mr. BIRNEY: That letter is offered in evidence as Exhibit No. —.

Q. Is this the original letter which you sent him? A. That is the original letter. He sent it back to me in due course of mail.

Q. You were also asked concerning the case of J. R. Hornbaker. Have you here any original letters from Mr. Hornbaker? A. I have one addressed to me on May 19th, 1894.

Mr. BIRNEY: Here produced for inspection of counsel and offered as an Exhibit No. —.

Q. Please state what opportunities for examination of your
309 files you have had since the last session and whether you have produced all the correspondence that you had with these people? A. I have had very little opportunity as my engagements in the Court of Claims were such and in regard to my interest in the country I could devote very little time to it consequently the search is not complete by any means.

Mr. TUCKER: The admission in evidence of letters and papers which have been offered at this session objection is made on the ground that they are wholly immaterial to the issues in this case and in no wise binding upon the complainant or the decedent George B. Edmonds.

Mr. BIRNEY: Counsel for the defendant states that the papers produced were so produced at the call of counsel for complainant as will appear from the record.

Mr. TUCKER: Solicitor for the complainant replies that not one of the papers produced was called for by the solicitor for the complainant.

Mr. TUCKER: No cross examination on this subject.

By Mr. BIRNEY:

Q. Col. Moyers in the examination of complainant in this case he testified to having had a conversation or conversations with you in 1899, but denies that he said to you that he did not claim that you were indebted in any way to him on account of James B. Edmonds,

but would like to get enough money to make him good in his claim of indebtedness from Edmonds to him. Please state what conversation, if any, you had with Mr. Cummings on that line?

Mr. TUCKER: Objected to as an attempt to contradict the testimony of the complainant upon a wholly immaterial matter.

310 Q. In stating what he did in that connection, he swore to what is absolutely false. His statement to me is substantially what is embodied in that question, and further stating that he knew I did all the work in all these cases and paid out all the money and was entitled to the fees.

Q. What, if anything, did he tell you about any indebtedness from Edmonds to him?

Mr. TUCKER: Objected to for the same reason and also because any statements made by the administrator can in no wise effect the rights of the estate of which he is the representative.

Q. He stated to me that he had made certain advances as the guardian, and that is the first intimation I had that he was the guardian of Edmonds, amounting to a few hundred dollars, and he wanted, if I could, out of the proceeds of this business—the Edmonds business, to refund that amount.

Q. The witness Butterfield, when on the stand testified (page 23) that at a conversation he had with you at which he showed you the duplicate of the contract between you and Edmonds that the list or schedule attached to it, you stated that the schedule was a forgery. Please state if you stated that and what you did say? A. I did not use the word forgery. I said it was a fraud.

Q. Was that the first time you had seen that list? A. The first time. I did not examine it then. I did not examine it then.

311 Cross examination.

By Mr. TUCKER:

Q. In your conversation with the complainant, Mr. Cummings, which you have just referred to, what was your reply to his alleged statement that he wanted to collect sufficient money to pay himself for advances made to Edmonds? A. I stated I would see about it.

Q. Did you say anything else? A. Nothing that I can remember. I am very positive I said nothing else.

Q. Why did you not tell him that you owned the Edmonds cases? A. Simply because I did not deem it necessary and I had not looked then to the papers in the case and my accounts.

Q. Is there anything in your accounts to show the purchase by you from Edmonds? A. There is an account showing that I had paid him $500.

Q. Where is that account? A. That is in my diary.

Q. Where is your diary? A. At my office. The diary will show

every dollar I paid him right along with the exception of some small amounts I paid him on the street.

Q. Why in your correspondence with Mr. Butterfield relating to these Edmonds claims did you never state or intimate that you
312 had bought Edmonds' interest in the claims? A. The reason is this, Mr. Butterfield was very persistent. I was suffering at the time from an ailment that resulted from my service in the army, and I was really unfit to transact any business and I told this man Butterfield that at the time repeatedly, but every few days he would call at my office. This was after I refused to pay a thousand dollars that he had loaned—Mr. George P. Davis. I refused to assume that indebtedness for the reason that I was not legally obligated. From that time on he was constantly pressing this matter of Cummings—this Edmonds matter and all that I wrote or said to him was simply for delay in order that I might have time to investigate my books and facts, etc.

Q. You knew at that time that the Edmonds estate had not interest in these claims? A. I knew. I was positive of it.

Q. Why did you give—— A. All I stated to Mr. Butterfield—I did not owe Mr. Edmonds one cent.

Q. Did you ever state to Mr. Butterfield that you had bought out Edmonds' interest in these claims in the summer of 1892 for $500? A. No, I did not because I did not buy it out for $500.

Q. Did you ever state that you bought it out for any sum? A. I stated that I did not know how the matter stood until I looked into it, and I was sick at the time.

Q. How long did your illness last? A. Several weeks and by the advice of my physician I went to the Hot Springs, Arkansas.
313 Q. When did Mr. Butterfield or Mr. Cummings first see you about this matter? A. It was very soon after this complaint about my not recognizing my indebtedness in the case referred to by Mr. Butterfield.

Q. How long was it after the act of March 3, 1899? A. Oh, several weeks, several weeks.

Q. Were you ill from that time until the time of the filing of this bill? A. Not all the time. Not all the time.

Q. On September 16th, 1899—— A. Not all the time. That is I was suffering all the time, but not to the same degree. I am not well now. I never expect to be a well man. Sometimes I suffer more than others.

Q. Why did you not at any time between the 3rd of March 1899, and September 16th, 1899, at the time of the filing of this bill, in your correspondence with Mr. Butterfield or in your correspondence with me or Mr. Cummings, tell them or either of them that you had bought out Edmonds' interest? A. Simply because I did not recognize that they had any business in the transaction. I will state in that connection in the first place Mr. Butterfield contended that Mr. Cummings had bought this interest from Mr. Edmonds in his lifetime. That I can prove outside of myself. He stated that in my office

on more than one occasion and brought up an assignment and showed it to me. I told him that at the time that assignment was made—it was about 1894 or 1895—that I supposed Mr. Edmonds
314 was not capable of transacting business at that date. Then he came with an assignment from Edmonds' brother representing that he was the sole heir—an assignment of all his personal property. I told him I could not recognize that, and could not consult with him, and I did not want anything to do with him in the way of a settlement, that there would have to be an administrator. Then they procured letters of administration, I was informed afterwards, and then this suit was brought. That is a clean cut tale of the thing just as it happened.

Q. Do I understand you to say that Mr. Butterfield claimed that Mr. Cummings had an assignment from George B. Edmonds dated back in 1895? A. I won't be positive about the date, but I know it was dated subsequent to my last payment to Edmonds and at a date, as I understand, covering the period of what is termed as his insanity.

Q. Don't you know that Mr. Cummings was committee in lunacy of George B. Edmonds and could not make such an assignment? A. Never at all. I never knew that until this transaction came up.

Q. You have made all the explanation you can of why you mentioned to Mr. Butterfield or to Mr. Cummings the fact of your having—the alleged fact of your having bought out Edmonds' interest. A. I have made all the explanation I think was necessary under the circumstances and conditions.

Q. Mr. Butterfield showed you the schedule attached to the partnership agreement of 1888 did he not? A. He brought a contract with a long schedule to it I did not examine it because I pronounced it as a fraud.

315 Q. Why did you pronounce it a fraud if you did not examine it? A. Because of its volume. It was immense. It covered a number of pages of written matter and I knew that Mr. Edmonds never turned over anything like that number of cases—nothing like it, hence I pronounced it a fraud.

Q. Where is this schedule that was attached to the original partnership agreement? A. There was never any schedule to it—attached to the original agreement.

Q. Why did you state in your sworn answer to the bill of complaint that there was such a schedule? A. I did not make any such statement. I made a statement that there was no schedule attached to the contract—the duplicate given to me, and which is now on file as exhibit in this case.

Q. Where is the schedule that is referred to in this partnership agreement? A. None was ever furnished me.

Q. I read from the third paragraph of your answer to the bill of complaint in this case: "This defendant says that upon the best of his recollection and belief the only cases named in said Exhibit No. One, which were among the cases specified in this schedule attached

to said agreement of February, 1888, were the cases in which J. C. Tappan, administrator and S. Fitshugh, administrator, for the claimants, respectively. *Q.* Where is that schedule referred to in that answer? A. I refer I suppose to the schedule that is made an exhibit to the bill of complaint in this case.

Q. That is the only explanation you have to make, in this
316 statement? A. Because I never had any schedule.

Re-direct-examination.

By Mr. BIRNEY:

Q. Upon the taking of the testimony for the complainant in this cause the schedule referred to as attached to the duplicate of the contract produced by complainant *were* shown you. Please state if you can explain *now* that schedule was made by and from what?

Mr. TUCKER: Objected to if by the question the opinion of the witness is sought, such opinion being clearly incompetent.

A. Mr. Edmonds was on very intimate terms with a gentleman by the name of Beardsley in my office and through Beardsley he had access to my books—my dockets and especially to the commissioner of claims index—index of the claims—consolidated index of the commissioner of claims of claims disallowed and I find that the schedule is made largely from my dockets and from the index referred to. I had occasion to di-charge Mr. Beardsley on account of this practice, from my employment.

Q. What is that index of claims to which you have referred in your last answer? A. The same index that Mr. Healy, a witness for the defence in this case, produced here on his examination. It is a consolidated index of claims rejected by the commissioner of claims, giving the numbers, names, States, amounts, etc.

Q. Of claims rejected by the Southern Claims Commission? A. Yes, sir.

317 Q. Is it in print? A. It is in print. A public document, but the publication was very limited and there are few attorneys who have it.

Q. Did you have it in your office? A. Yes, sir.

Mr. TUCKER: All statements made by this witness which are in the nature of charges against George B. Edmonds are objected to as incompetent under the statute, the person against whom such charges are made being dead and unable to refute them. At the hearing it will be moved to strike all such statements out.

Re-cross examination.

By Mr. TUCKER:

Q. Mr. Moyers, when do you claim that Mr. Edmonds acquired this information from your record and files? A. During 1886, 1887 and 1888.

Q. Don't you know that in 1886 Mr. Edmonds sent out a large number of circulars to claimants whose claims had been rejected by the Southern Claims Commission and in this way acquitted these claims which he afterwards turned over to you? A. I do not know it of my personal knowledge. I knew he was around my office daily and nightly.

Q. When? A. In 1866–'7 and '8.

Q. When? A. 1886–'7 and '8.

Q. And did you then believe that he had abstracted this information from your files and records? A. I believed so some time in 1888 and consequently discharged Mr. Beardsley.

318 Q. And notwithstanding this belief you made you did in 1888 from this partnership agreement—made this partnership agreement with Mr. Edmonds? A. I think that was made before.

Q. Before 1888? A. Oh, no. sir, during 1888. That was made early in 1888. It was not a partnership agreement. It was an employment of me to attend to certain business for him in the Court of Claims in regard to certain cases. You might style it a limited partnership. There was no general partnership.

Q. And notwithstanding this belief that you entertained in 1888, you claim that you paid Mr. Edmonds from that date up to the summer of 1892 about $1500. for his interest in the claims which he had fraudulently obtained by access to your files? Is that right? A. I have not stated that all the claims in the schedule are fraudulent. That is an implication of your own—an inference rather. I paid him for what I considered were claims that he had honestly obtained and transferred to me as attorney of record.

Q. Will you be kind enough to take this Exhibit No. One attached to the bill of complaint in this case and point out the cases which he obtained through access to your files (handing witness Exhibit No. 1). A. I could not do that. I have made a definite answer in regard to all these cases. I have made already a definite answer in regard to each case specifically as shown by the records of the court and my own records. It is only a repetition of what I have already stated.

GILBERT MOYERS.

319 Subscribed and sworn to before me this 23rd. day of May, 1900.

MASON N. RICHARDSON, *Examiner.*

320 EXHIBIT M. N. R. No. 1.

73373 Gilbert Moyers & Geo. B. Edmonds, agrees to prosecute
4740 the following cases and divided the fees set opposite of
25650 each case equally between them.

Mr. Moyers will be at all future expenses in every respect in prosecuting every case, and no future expenses shall be required of said Edmonds. But the expenses which said Edmonds has been to will be required from said Moyers.

The pin used to fasten this sheet to the one next below was removed by me, and the two sheets pasted together. Mason N. Richardson, examiner.

The powers of attorney which was issued to said Edmonds shall be retained by him, and he shall have the power to collect all sums that shall be awarded on these cases or any one of them.

Said Moyers shall be to all the trouble, expenses, clerk hire, office room &c., for collecting those claims, and said Edmonds shall only do what he feels disposed to do.

In case said Moyers does not deem it advisable to prosecute any case, he shall surrender — or to said Edmonds, and in any such case no expense shall be required from said Moyers.

321 *Agreement.*

Know all men by these presents, in duplicate, that the undersigned, attorneys of Washington, D. C., are special partners in the prosecution of the cases named in the schedule hereto attached now pending before the United States Court of Claims and the Congress of the United States, the fee agreed to be paid by the client in each case being the per centum of whatever may be recovered as is stated herein, and the agreement between the undersigned being that each shall have half of said fees and that each shall pay one-half of the expense incident to the prosecution of same, which expense is not to exceed 2½ % of the amount that may be allowed upon said claims.

And it is hereby agreed and understood that the said Gilbert Moyers shall represent and be associated with me in the prosecution of said claims before the Court of Claims and the Congress of the United States as joint attorney of record.

It is hereby understood and agreed that the undersigned Gilbert Moyers, is to advance the expenses incident to the prosecution of said claims.

Witness our hands this 6 day of February, 1888.

GILBERT MOYERS.
GEO. B. EDMONDS.

322 EXHIBIT M. N. R. 2.

WASHINGTON, D. C., *Dec.* 5, 1891. No. 10.

N. M. B.

The National Metropolitan Bank of Washington.

Pay to George B. Edmonds or order $20.00 twenty $\frac{00}{100}$ dollars
Paid Dec. 5 1891

GILBERT MOYERS.

EXHIBIT M. N. R. 3.

WASHINGTON, D. C., *Dec.* 10, 1891. No. 21.

N. M. B.

The National Metropolitan Bank of Washington.

Pay to George B. Edmonds, or order $30.00 thirty $\frac{00}{100}$ dollars
Paid Dec. 10 1891

GILBERT MOYERS

EXHIBIT M. N. R. 4.

WASHINGTON, D. C., *Jan'y* 16, 1892. No. 119.

N. M. B.

The National Metropolitan Bank of Washington.

Pay to George —. Edmonds or order $50.00 fifty $\frac{00}{100}$ dollars
Paid Jan. 16 1892

GILBERT MOYERS.

323 EXHIBIT M. N. R. No. —.

ROCKY SPRING, MISS., *April* 8, 1892.

Gilbert Moyers, Esq., Washington, D. C.

DEAR SIR: Enclosed you will find papers in Tenor Brobay claim I have been appointed administrator of the estate. Please let me know what additional evidence you wish in the claim, and on what points.

Yrs. &- L. BAGNELL.

324 EXHIBIT M. N. R. No. —.

"Milford mills." J. R. Hornbaker, manufacturer of all grades flour, meal, feed, and all kinds of dressed lumber.

Highest price paid for grain.

BRISTOE, VA., *May 19th*, 1894.

Mr. Gilbert Moyers, Washington, D. C.

DEAR SIR: In reply to yours of May 15th will say that the witnesses to the proof that I owned the property and that it was taken for the use of the army, are getting to be quite old people and would rather not go down to Washington unless it was really necessary, then they would go. Mr. Elias Goode and wife and their son Adam Goode saw the army take the flour out of my building and take it to the camp.

William Lipscomb is a notary of Manassas, Va.

I would have gotten my pay in the first place had it not been for an enemy who reported against me and did not want me to get my just pay.

I have on hand at this time in my mill about 300 bbls. of flour and they had just as well say that this flour was not mine as to say the flour the army took was not.

Yours truly, J. R. HORNBAKER.

325 EXHIBIT M. N. R. No. —.

WATER VALLEY, MISS., *Oct.* 29/94.

Gilbert Moyers, Esq.

DEAR SIR: I took the testimony in the Roderick Williams case at Pine Flat Church on the 27th on time.

Mrs. Williams testified that she was present and saw the property taken, and I pressed up the testimony as far as possible, to corroborate our statement. You will see that Murray says he knows the property was there when the army went there, and was gone in a few minutes after they left. That he was in sight and saw them there and went there as soon as they left.

Markett says Williams had the property and he was there the next day, and it was gone, and saw the fresh sign where the corn & fodder was taken, that it was found to be taken by the Federals that there was no other soldiers in the country. Judge says they hauled corn & fodder and drove stock, hogs and sheep to his house from the direction of Williams' place, and left some sows and pigs there which belonged to Williams, which shows they drove stock from his place, with this proof I think you can sustain the old ladies' testimony beyond doubt.

I will take some strong affidavits in the Taliaferro case tomorrow. This is an outrage, he was a Union man sure. I think the testimony showing that Sugg. and other Confederate soldiers visited his house is what done the devilment. His daughters were first class, and would naturally be visited by young men, while Taliaferro was a strong Union man his family stood high with the best
326 people in the country. In order to protect his daughters and family he was bound to treat Confederate soldiers kindly about his house. All who lived here then knows this to be so.

I must not forget to thank you for your verry complimentary reef/rence to my ability to take testimony.

I have written our Congressman Col. Money, and Col. C. B. Howney, my special friend, to urge Col. Dodge to file his brief in the Young case and others. I herewith return your brief in Williams case.

Yours truly, H. K. MARTIN.

327 *Testimony on Behalf of Complainant in Re-buttal.*

Filed May 22, 1900.

In the Supreme Court of the District of Columbia.

HORACE S. CUMMINGS, Administrator,
vs.
GILBERT MOYERS. } Equity. No. 20802.

Be it remembered that at an examination of witnesses begun and held pursuant to agreement on the 3rd day of May, 1900, at which said examination there were present Charles Cowles Tucker, Esq., solicitor for the complainant, and Arthur A. Birney, Esq., solicitor for the defendant, personally appeared before me, J. Arthur Lynham, an examiner in chancery of said court, the within named witnesses, who being called for and on behalf of the complainant in rebuttal, and being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth touching the matters at issue in the above entitled cause, did depose and say what is hereinafter set out as stated by them.

J. ARTHUR LYNHAM, *Examiner.*

328 In the Supreme Court of the District of Columbia.

HORACE S. CUMMINGS, Administrator,
vs.
GILBERT MOYERS. } Equity. No. 20802.

THURSDAY, *May 3rd*, 1900—2 o'clock p. m.

Met, pursuant to agreement, to take testimony in rebuttal on the part of the complainant.

Present: Charles Cowles Tucker, Esq., of solicitors for the complainant, and Arthur A. Birney, Esq., solicitor for the defendant.

Whereupon—

Mr. TUCKER: The solicitor for the complainant here offers in evidence the records, papers and proceedings in the supreme court of the District of Columbia in the matter of George B. Edmonds, alleged lunatic, known as equity cause No. 12926, wherein said George B. Edmonds was, by the findings of the marshal's jury dated January 24th, 1891, declared to be suffering with chronic mania, and to be a lunatic of unsound mind, so that he had not capacity sufficient for the government of his property; and wherein it was further found by said jury that said Edmonds had been such lunatic since January 1st, 1891; and wherein Horace S. Cummings was by said court, on January 31st, 1891, appointed committee of the person and estate of said lunatic. Said records, papers and proceedings to be submitted and read at the hearing.

329 Mr. BIRNEY: That is objected to as incompetent and irrelevant, and not proper in rebuttal.

Thereupon EDWARD A. BALLOCH, M. D., a witness of competent age, produced on the part of the complainant in rebuttal, and being first duly sworn, was examined and testified as follows:

Direct-examination.

By Mr. TUCKER:

Q. You have given your full name, Doctor to the examiner? A. Yes, sir.

Q. How long have you been a practicing physician in Washington? A. Twenty-one years.

Q. Were you acquainted with the late George B. Edmonds in this city? A. I was.

Q. When and under what circumstances did you become acquainted with him? A. I had seen him on several occasions in the office of W. M. Goodlove, perhaps a dozen times in all.

Q. Without my asking you any question, when? I said when and under what circumstances. A. I can't fix the year, but it must have been somewhere between 1890 or 1894, as near as I can place it. I can't state definitely.

330 Q. Did you testify in the lunacy proceedings in the supreme court of the District of Columbia in which George B. Edmonds was found to be a lunatic on January 24, 1891?

Mr. BIRNEY: I object to that as incompetent.

A. I did.

Q. How long before that proceeding had you known Edmonds, approximately? A. Two months.

Q. What, if any, examination did you make of Edmonds' mental condition before testifying in that proceeding?

NOTE.—It is agreed that the general objection already made shall apply to all evidence in this case on the lines indicated by the questions already propounded.

A. The special examination for that purpose was made in connection with Doctor Caldwell, but I was familiar with his condition before that?

Q. And is the result of your acquaintance with him and examinations made of him? A. Yes.

Q. Now, from your knowledge of Mr. Edmonds, at that time, and as a result of the examinations you had made, and then made, what is your opinion of his mental condition at the time of those proceedings, in 1891? A. My opinion is that he was of unsound mind, suffering from chronic mania, incompetent to attend to business, or anything of that nature.

Q. What was the degree of his mental alienation? A. I should class it at that time as slight, as not severe enough to warrant his being taken care of in a hospital, but of sufficient degree to

331 prevent him from attending to any business affairs.

Q. I was about to ask whether it, in your opinion, incapacitated him from attending to his business affairs, and to make contracts understandingly? A. In my judgment it would.

Q. Did you know anything of him after that time—after the date of these proceedings? A. I don't remember anything about him after that. I used to see him on the street. That was about all.

Q. What if any, improvement was there in his condition, so far as you could observe it? A. I can't say. I don't recollect talking to him after that at all.

Q. Now from the nature of his disease, chronic mania, what would you say were the prospects of improvement or otherwise?

Mr. BIRNEY: That is objected to as not the best evidence that can be offered of the condition which in fact ensued of the patient.

A. The disease from which he suffered is progressive, or of a progressive nature, and goes from bad to worse.

Q. Doctor, in 1891, when you made these examinations of him, and were more particularly interested in his case, what evidence of his mental aberration would he show to observers or persons having business with, or conversing with him? A. The main thing was suspicious about his brother, and other persons, and delusions of prosecutions by them, robbery, and so forth.

332 Q. State whether his condition would be manifest to one conversing with him for any length of time, on business or other matters?

Mr. BIRNEY: Objected to, since no foundation, or sufficient foundation, has been laid for the inquiry.

A. Unless the conversation should happen to turn on the particular delusion from which he suffered, it would not be apparent to the casual observer.

Q. Now, you speak of the casual observer. State whether or not it would be apparent to one having daily business relations with him extending over a period of several months?

Mr. BIRNEY: Objected to as leading.

A. In my opinion, it would.

Cross-examination.

By Mr. BIRNEY:

Q. Did you ever discuss business affairs with him, Doctor? A. No, sir.

Q. Were you ever present when he discussed business matters with any other person? A. Yes, sir.

Q. With whom? A. With Doctor Goodlove, who was his attorney in a pension claim.

Q. Did he show an appreciation of the business of which he talked? A. To some extent.

333 Q. Well, to what extent did he fail to appreciate the character of the conversation in the business? A. On some occasions he was garrulous, diffusive, and on others he was morose and silent. That is about all I can say at this length of time.

Q. Did he show a knowledge of what was the subject of the conversation? A. The main subject of his pension claim, he did, but on the finer points of it—the legal technicalities, he did not.

Q. Did you know that he was familiar with the legal technicalities of pension law? A. I so understood at the time.

Q. He had never been a pension attorney within your knowledge, had he? A. He had not.

Q. Then, except for his failure to understand, or to appreciate the finer technicalities of pension law, you saw no evidences of any want of understanding? A. Beyond the alterations in character that I have detailed, I did not.

Q. How many times did you examine him? A. It depends upon what you mean by an examination.

Q. Well, I mean how many times did you make a medical examination to determine his condition of mind? A. A formal medical examination, only once. I had been more or less familiar with his condition before I examined him.

Q. What had been your opportunities before then? A. I at that time was transacting some business with Dr. Goodlove, and I used to see Mr. Edmonds in his office nearly every day, perhaps twenty times or more.

Q. Seeing him in the office, did you have conversations
334 with him? A. Yes, sir.

Q. On what subjects, Doctor? A. On the general topics of the day. On no particular subject that I can remember. I used to see him in the office there, and he used to make that a sort of headquarters.

Q. Did he discuss the general topics of the day understandingly? A. Sometimes he would, and at other times he would not answer at all. He would be perfectly silent.

Q. But when he did discuss them it would be with understanding? A. For a short time. He did not seem to be able to hold his mind on any subject for any length of time.

Q. Did you know what became of Mr. Edmonds after the trial? A. I did not. I used to see him on the street occasionally after that, but since that time I had no particular knowledge of him.

Q. During what period after that did you see him on the street? A. I cannot state definitely, perhaps six months.

Q. What is the technical designation of the malady under which he suffered? A. Chronic mania, or perhaps mono mania would come nearer to it.

Q. What was the character of that mania? A. Delusions of persecutions by his brother and others.

335 Q. Then, as mono mania, it was confined to that, was it not? A. Yes, sir; there were general evidences of a weakening of the mental capacity, though.

Q. But his delusions were confined to the idea of the persecution by his brother and what else, if anything? A. That is all that I remember at this time. That is the one that fixed itself in my mind.

Q. You do not recall that he had delusions upon any other topic? A. I do not recall that he did.

EDWARD A. BALLOCH.

Signed by the examiner by conset of counsel.

J. ARTHUR LYNHAM, *Examiner.*

Mr. TUCKER: The solicitor for the complainant here offers in evidence an official letter from the superintendent of the Government Hospital for the Insane, addressed to Davis and Tucker, and dated March 3rd, 1900.

NOTE.—And the same is filed by the examiner, marked Complainant's Exhibit in Rebuttal No. 1.

Mr. TUCKER: And also an official endorsement of the government of the Southern branch of the National Home for Disabled Volunteer Soldiers, dated March 19th, 1900, and attached to a letter addressed to him by Davis and Tucker.

NOTE.—And the same is filed by the examiner, marked Complainant's Exhibit in Rebuttal No. 2.

NOTE.—It is stipulated by and between the counsel for the respective parties that these official communications shall be
336 accepted in evidence as accurately giving the information they convey with respect of George B. Edmonds, without formal production of the official records of the hospital and home.

Thereupon WILLIAM M. GOODLOVE, M. D. a witness of competent age, produced on the part of the complainant in rebuttal, and being first duly sworn, was examined and testified as follows:

Direct-examination.

By Mr. TUCKER:

Q. Where do you live, Dr. Goodlove? A. 201 T street, northwest.

Q. You have been a resident of this city for some years? A. I have been here since 1885.

Q. Are you a practicing physician? A. No, sir.

Q. You are employed, I believe, in the Pension Office? A. I went in the Bureau of Pensions as a qualified surgeon of that bureau in 1885.

Q. And have been in the Pension Office since 1885? A. Yes, sir. You understand me, I have not been in the active practice of medicine and surgery during that time.

Q. Were you acquainted with the late George B. Edmonds of this city? A. I was acquainted with George B. Edmonds. I did not know that he had died until you informed me to-day, though,
337 Q. Well, he died in 1896. A. Yes, sir, I was not here at that time.

Q. When did you first make his acquaintance? A. I am not prepared to state the exact year. It was in 1886, '7 or '8; one of those three years. He came under my observation at that time as an applicant for pension. I examined him for information in the bureau. That is my impression now. I know I had something to do with him, examining him there as qualified surgeon for a pension.

Q. And you knew him until what time? A. I knew him until sometime just before I left the city. I was located in Boston two years. After I left here for Boston, I did not see him again. I think it was in 1894 or '5 that I saw him last. I am not positive as to the exact time.

Q. Was he in the Homeopathic hospital when you last saw him? A. No, sir; he was not in either hospital.

Q. Now, what was the degree of intimacy between you and Mr. Edmonds during that time you knew him? A. Well, after I left the office in 1889—the Bureau of Pensions, I was out a while, and I was practicing before the bureau, and Mr. Edmonds called on me to file a claim for him for pension and I believe I did file it before I discovered and believed actually that he was insane. I think I filed the claim over again, if I am not mistaken, because I made up my mind that he was insane and irresponsible and I went to his brother and told his brother that George was in very destitute circumstances——

Mr. BIRNEY: Well, I object to the conversation.

338 Q. Well, don't relate any conversation with James B. Edmonds. I just want to find out how much you saw of George B. Edmonds, and how intimately you knew him from, say 1889 up to 1894 or 1895? A. I saw him very frequently. I could not give you the exact years. Let me see. From about October, 1889 to some time during the year 1893. I think I saw him frequently, almost every day. There may have been times—there was one time he went away for a short while to the hospital for the insane, I think. Of course, while he was away I did not see him, but while he was in the city, during those years, I saw him every day almost.

Q. Do you know whether or not he was at any time an inmate of the Soldiers' Home at Hampton, Virginia? A. I think I heard something of that, but I can't recall the date. I don't remember and I don't know it as a fact that he was there.

Q. Do you know whether or not he spend some of his time down in Virginia, in the Shenandoah valley, or Harpers Ferry?

Mr. BIRNEY: That is objected to as clearly intended to be suggestive to the witness, and leading.

A. Only what he told me.

Q. Well, don't relate what he told you. Did you testify in the proceedings in the supreme court of the District of Columbia, in which Mr. George B. Edmonds was, by a jury of inquest, adjudged to be insane? A. I cannot recollect that I did. I may have, but I cannot recollect that I did.

339 Q. Did you know of such proceedings? A. Yes, sir; I was the cause of them being brought.

Q. Why did you cause them to be instituted?

Mr. BIRNEY: That is objected to as irrelevant and immaterial.

A. Because I discovered that he was not capable of prosecuting a claim for himself, according to my judgment.

Q. You mean his claim for pension? A. Yes, sir. I was attorney for him.

Q. Now, from your previous intercourse with him, and your knowledge of him, what do you say was his mental condition at the time of that finding? A. I want to state that I am not testifying as an expert.

Q. Oh, no, you are not called for that. A. I considered that he was of unsound mind from the time that he first called upon me and filed his claim, in 1889, I think, the fall of 1889; I noticed that he was erratic in his movements, or actions. Came in to see me eight or ten times a day, walk in and walk around the room and stand at the windows and stare and make some foolish remarks and leave the office. I could do almost anything with him, but his brother nor his committeeman could not do anything with him much, until after he was appointed. I coaxed him and persuaded him to allow Mr. Cummings to be appointed. They wanted me to be appointed committeeman and to go on my bond, but I would not be bothered and declined it.

Q. What would you say of his capacity then, or his incapacity to conduct important business affairs? A. Well, I do not think that his condition was such that he could conduct a very small
340 affair of his own even. He was scarcely able to take care of himself. That was the trouble. He was rather forgetful. He would commence to talk. He would put up his hand and say, "What was it I said just then; I have forgotten? Well, it is no matter." He would say, "It is of no importance." He would get up and move off maybe and I would have to call him back and finish the conversation with him, and I noticed that he was forgetful, and I thought he was suffering from paresis at that time, and in fact I told his brother so.

Q. State whether or not, at any time, because of his mental condition, you decline- to transact business for him? A. Yes, sir.

Q. When was that and under what circumstances? A. Directly after I had filed his claim. I said to my clerk at the time that I did not think that that claim was valid. I did not believe the old——

Mr. BIRNEY: That is objected to.

Q. Don't relate what you said to the clerk? A. (Continuing:) Anyhow, I thought it best to go to his brother and talk about it. They wanted me to be appointed as I said before, and then they suggested Mr. Cummings. His brother would want to send money by me to George. I declined. I think I carried it once or twice, maybe, I believe I did, I am not positive. I know I declined thereafter to do that. I believe that I suggested that he be examined by Doctor Balloch and somebody else at that time. Doctor Balloch was a professor in a college, and I think I suggested Doctor Caldwell also, and Mr. Cummings left it to me as he was fearful he could not manage him or do anything.

341 Q. Now, Doctor, tell me, if you please, whether or not Mr. Edmonds' mental condition, was such as to be apparent to any

one transacting business with him? A. Well, I should think so. If you have five minutes' conversation with him you could not help but notice that he was irresponsible. He didn't know what he was talking about. He would forget the subject matter of which he was talking about in a two minutes' conversation.

Q. After the finding of the marshal's jury, did you, or did you not, observe any improvement in his mental condition? A. No; I think he grew gradually worse all of the time. That was my observation; and I feel confident now, since we have been talking, that I examined him for pension in about 1888, and I think I made a minority report that the man was insane at that time. Now, that is my judgment. Of course, I am not swearing positively to that, but that is my judgment.

Cross-examination.

By Mr. BIRNEY:

Q. Doctor, how long was it before the application for the appointment of a committee that you observed Mr. Edmonds to be affected in this way? A. As I said before, I think it was about 1888, or 1890, about the time I became acquainted with him, in 1888 or 1887, somewhere along there. Just before I left the Pension Office.

342 Q. How long were you out of the Pension Office? A. From 1889 to 1895. This early winter of 1895, February, 1895, I believe it was.

Q. When was it that you prepared the application for the pension? A. I believe that it was in the fall of 1889.

Q. Have you no means of refreshing your recollection? A. No, sir; not in my possession. I will tell you, I think you could be refreshed—where I could get the means of refreshing my memory, at Mr. William Fletcher and Co's. office; they have my old books.

Q. When did you leave Washington for Boston? A. In 1895.

Q. And when did you return? A. In 1895 I went into the Pension Office. I entered the Pension Office in February, and I left for Boston in April—in May 8th. I remember the date exactly now. I returned—let's see—what year was President McKinley elected?

Mr. BIRNEY: 1896.

A. Returned in April 1897 from Boston.

Q. How frequently did you see Mr. Edmonds after the committee was appointed? A. Oh, I saw him frequently after the committee was appointed. After he had a guardian or committeeman I saw him frequently.

Q. Where did you see him? A. At my office.

Q. He was under no restraint that you knew of? A. No. Only part of the time I think I suggested that they had better take him

to the asylum, and I thought he was taken there a short
343 while; that is my impression, I think he was. In fact, I feel confident in the matter, that he was taken over here to the hospital for the insane in this city.

WM. M. GOODLOVE.

Signed by the examiner by consent.

J. ARTHUR LYNHAM, *Examiner.*

Thereupon HORACE S. CUMMINGS, the complainant, having been heretofore duly sworn, was re-called and further interrogated in rebuttal.

Direct-examination.

By Mr. TUCKER:

Q. Mr. Cummings, Mr. John C. Scott, in his deposition on behalf of the defendant testified that from 1887 until the summer of 1892, Mr. George B. Edmonds was in Colonel Moyers' office almost daily. Were you acquainted with Mr. Edmonds during that period? A. I was.

Q. Please state how much of the time between March, 1887, and the summer of 1892 Mr. George B. Edmonds spent in the District of Columbia, so far as your knowledge goes. A. Well, can I—I want to change that question a little.

Q. Well, don't change the question. Make your answer. A. Well, I would say from the summer of 1888 to January 1891,
344 I do not think that Mr. Edmonds was in the District of Columbia more than three or four months.

Q. Where did he spend the rest of his time, so far as you know? A. I know that he went somewhere in the vicinity of Harpers Ferry, and somewhere below that, in the valley of Virginia, and was gone several months. I know that he was at the Soldiers' Home in Hampton from July, 1889 until February 1890. I know that he was away in the summer of 1890. It was somewheres in the vicinity of Harpers Ferry. Where it was I could not say.

Q. Did he ever spend any time in the Homeopathic hospital in this city, to your knowledge? A. In January, or the latter part of January, or the first of February, 1895, he was taken with a stroke of paralysis or apoplexy, I don't know which, and was very sick, and I at once made arrangements for him to go to the Homeopathic hospital, and he went there the first part of February, 1895. He remained at the hospital and was not out of the hospital for a year, absolutely helpless. In February, 1895, the authorities at the hospital said that his was an incurable case.

Mr. BIRNEY: That is objected to.

Q. No, don't state what they said. Don't state what the author-

ities of the hospital said. A. (Continuing:) Well, in February, 1896, I had him taken from there over to Dunloring, in Virginia. I made arrangements with a man by the name of Charles Taylor, who lived on the farm of a friend of mine, to take Mr. Edmonds and take care of him. He went there and was taken care of and I paid all
345 the bills to the date of his death, which was the very last of October, or the first of November, 1896.

Q. Mr. Cummings, I hand you a letter dated May 26th 1899, addressed to you, and purporting to be signed by Gilbert Moyers and ask you to state whether that letter has ever been in your possession. (Handing witness letter.) A. (After examining same.) This letter has been in my possession from the date of its receipt, on the same date that it was written.

Q. Whom did you receive it from? A. I received it through mail.

Q. From whom? A. From Gilbert Moyers.

Q. Was it in response to any letter that you had written to him? A. It was.

Q. Do you know whether the signature to it is in Gilbert Moyers' handwriting? A. I do.

Q. Is it his handwriting? A. The signature is Gilbert Moyers' own handwriting.

Mr. TUCKER: I offer in evidence the letter just exhibited to the witness.

NOTE.—And the same is filed, marked Complainant's Exhibit in Rebuttal No. 3.

Q. I hand you an envelope marked, Susan S. Merrill, and containing other endorsements, which envelope contains a blue envelope upon which several indorsements are made, and which blue envel-
9
ope contains a letter dated April 9th, 1886, purporting to be
346 signed by Susan Merrill, and ask you whether these envelopes and this letter were ever in your possession? A. The envelopes and the contents as it appears there are in the same condition in which I found them in Mr. George B. Edmonds' papers.

Q. They have been then in your possession since the death of Mr. George B. Edmonds? A. They have.

Q. And were found in his effects? A. Found in his effects, in the trunk containing all of his papers.

Mr. TUCKER: I offer in evidence the papers just identified by the witness.

NOTE.—And the same are filed, marked Complainant's Exhibit in Rebuttal No. 4.

Mr. TUCKER: The solicitor for the complainant also, in this connection, offers in evidence the return of the Secretary of the Treasury heretofore made to a request by the supreme court of the District of Columbia for certain information to be used in this suit

in connection with the claim of Susan S. Merrill, said return to be read in evidence at the hearing.

Cross-examination.

By Mr. BIRNEY:

Q. Mr. Cummings how are you able to give the dates of Mr. Edmonds' stays in the District of Columbia, and his absence therefrom? A. From general recollection of the time of year.

Q. Have you in your possession anything from which you
347 have refreshed your mind? A. No, I have no recollection of anything to refresh my mind, except the letter that was sent from the home, at Hampton.

Q. That is to say, the letter which has been to-day offered in evidence? A. The letter was offered in evidence. I know the time of the year that it was in, but I could not tell the date.

Q. Now, where was Mr. Edmonds in the summer of 1890? A. He went away and was gone several months, where I don't know, except when he came back I asked him where he had been and he said he had been up in Virginia.

Q. Well, how intimate was your association with him at that time? A. Well, I used to see him very, very often.

Q. Where? A. In my office?

Q. You saw him when he chose to come to your office? A. And when I would meet him on the street. I think then he was boarding at the corner of Twelfth and F streets. I won't be positive, but I think he was boarding at the corner of Twelfth and F streets

Q. You did not visit him at any time at his boarding house? A. No, sir.

Q. You don't know when he returned? A. I could not say when he returned or when he went.

Q. Well, where was he after that? A. He was here.

Q. Up to what time? A. He was here in December certainly 1890, and then he was adjudged a lunatic in January, 1891.

348 Q. Well, where was he during 1891? A. He was in the city.

Q. Where was he living? A. He lived for quite a while on Seventh street between L and M, as I recollect, on the east side.

Q. Was he under any restraint? A. No; he was under no restraint. If I may offer an explanation I will tell why.

Mr. TUCKER (to the witness): Just state why, Mr. Cummings.

A. His brother, James B. Edmonds, had a conversation with Doctor Godding, and Doctor Godding said that George B. Edmonds——

Mr. BIRNEY: Well, that is objected to as incompetent.

A. (Continuing:) Was harmless.

Mr. TUCKER (to the witness): Well, don't state what Doctor Godding said.

Q. Where, then, did he live after he left the place you have just mentioned? A. He went up on F street, between Sixth and Seventh, north side.

Q. Did he live there with any relatives, or—— A. No relatives.

Q. Lived in a boarding house? A. No; there were two ladies there, elderly people, and I hired a room of them in which Mr. Edmonds lived, and at my request they looked after him.

Q. He went about freely at that time? A. He went about freely at that time.

349 Q. Who paid all of his bills? A. I paid all of his bills.

Q. To them? A. To them.

Q. And to other persons? A. Other persons. Clothing, food, books, stationery of every kind—I paid every bill.

Q. For how long a period? A. From 1891 to the date of his death.

Q. Did you have any funds of his in charge? A. Only his pension.

Q. And how much was that? A. Twenty-five dollars a month, I think, and afterwards increased to thirty.

Q. That you applied in your reimbursement? A. Yes. And if you will look at my account as passed by the auditor you will find that the auditor found that I had paid out some two or three hundred dollars more than the amount that came to me.

Q. You mean in your account as committee?. A. As committee.

Q. Did you at any time exercise any restraint, as committee, over Mr. Edmonds, up to the time of his death? A. Well, what do you mean by that? Physical restraint?

Q. Yes. A. No. No occasion for it.

Q. What part, if any, did you take in the care of the business in which he had been before that time concerned? A. I took no part in it.

350 Q. Why not? A. Simply because I knew that he had turned it over to Mr. Moyers.

Q. Did you make any inquiry about it? A. I knew that they were all what we might call Bowman Act cases, and no appropriations had been made to pay them, as I was assured.

Q. Did you ever get any list of them, or memorandum of them? A. I did not. I depended on what other people told me.

Q. Do you know whether or not Mr. Edmonds was attempting to take care of those cases in any way? A. I never heard that he did.

Q. Did you make any inquiry whatever about that? A. I did not, only I asked Mr. James B. Edmonds if anything was coming to him, and he said no. That is, he said—well, I can't say what he said.

Q. When was it that he left the District finally? A. At what time?

Q. Yes. A. In February, 1896. I procured a carriage and two men to carry him to the station, and he went over there to what they call Dunloring station, and there another team met him and carried him to Mr. Taylor's house.

Q. During the time that he was in the District he was not attended by any person who was in the custody of him. A. No.

Q. He went about the city by himself? A. He went around the city by himself, and I made a request of him that he should
351 come at least once a week to see me, which request he not only carried out, but probably went a hundred per cent. better.

HORACE S. CUMMINGS.

Signed by the examiner by consent.

J. ARTHUR LYNHAM, *Examiner.*

Thereupon H. LEROY MARK, a witness of competent age, produced on the part of the complainant in rebuttal, and being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. TUCKER:

Q. Mr. Mark, where do you live? A. Woodmont, Iowa circle.

Q. What is your occupation? A. I am in the real estate department of the Washington Loan and Trust; superintendent of the building.

Q. Have you in your possession now, the rent book of the Washington Loan and Trust Company building? A. Yes, sir.

Q. For the years 1892 and 1893? A. Yes, sir, up until 1898. This book runs.

Q. Will you please produce it? A. Yes, sir; here it is.

352 Q. Please point out what, if any, entry there is in that book relating to the tenancy of Gilbert Moyers in the Washington Loan and Trust Company building? A. Mr. Moyers signed lease No. 110 for rooms Nos. 33 to 36 on the third floor, dated January 1st, 1893, and expiring December 31, 1893 for one year.

Q. In whose handwriting are those entries? A. In Tenney Ross'. He was at that time the custodian of the building.

Q. Where is Ross now? A. He is in the Philippines now, I believe.

Q. He is in the army? A. Yes sir; as lieutenant.

Q. Did you ever see his writing—see his handwriting? A. Yes, sir. I took up the work that he laid down as he left.

Q. From the entries in that book, please state when Mr. Moyers' tenancy began and when it ended? A. His lease began January 1st, 1893, cancelled May 31st, 1895—the lease was cancelled on June 3rd, 1895, he paid ninety dollars rent, which was the last payment he made and it was cancelled on May 31st.

Q. How much rent did he owe when he went out?

Mr. BIRNEY: That is objected to as improper.

A. From the showing here it seems as though he had squared up. He paid the May rent on June 3rd, and it was cancelled on May 31st. In fact, he paid three months' rent on June 3rd.

353 Q. Look at those entries carefully again, Mr. Mark, please.
A. Yes, sir.

By Mr. BIRNEY:

Q. You mean that is correct? A. Correct, yes sir.

By Mr. TUCKER:

Q. Don't they show that he owed a large balance for rent?

Mr. BIRNEY: That is objected to as leading and clearly incompetent. The books being a much better witness than Mr. Tucker.

A. No. It is *bearly* possible that Mr. Moyer- turned in a note for this, but I don't know whether he did or not.

Mr. BIRNEY (to the witness:) The question is, what the books show?

A. The books show that it was paid here, and the lease is cancelled on May 31st, 1895, and he has paid here the month of May, which means up to May 31st. On June 3rd, he paid the March, April and May rent.

Q. Is that the book of original entry? A. Yes, sir.

Mr. TUCKER: I offer in evidence the entries in that book, and it is stipulated between counsel for the respective parties that the statements of the witness with respect to the entries shall be taken as correct without further proof.

Cross-examination.

354 By Mr. BIRNEY:

Q. Mr. Marks, was Mr. Moyers a tenant of the building before the time you mentioned? A. Why, I can almost say that he was not, because it goes in the book the minute he moves in the building.

Q. Have you looked at the books or records to see if Mr. Moyers was a tenant before the time you named? A. Yes, sir, I have gone before this entry here and have found nothing. His first lease was 110.

Q. How far back did you go? A. I have gone back to the construction of the building from lease No. 1. That is the first lease that Mr. Moyers signed January 1st, 1893.

Q. You find no other indication of his tenancy prior to lease 110? A. Nothing directly there at all.

Re-direct-examination.

By Mr. TUCKER:

Q. Where were these rooms situated that were covered by his lease in the building? A. Rooms 33 to 34 on the third floor. Now it is possible that he had moved, I don't know. No, he kept those same rooms all through his tenancy.

Q. Where were those rooms located in the building? A. On the third floor.

Q. On the Ninth Street side or on the L? A. In the L, the same suite that Hemphill and Peter have now, or David H. Meade.

H. LEROY MARK.

355 Signed by the examiner by consent.

J. ARTHUR LYNHAM, *Examiner.*

Thereupon CHARLES A. ECCLESTON, a witness of competent age, produced on the part of the complainant in rebuttal, and being first duly sworn, was examined and testified as follows:

Direct-examination.

By Mr. TUCKER:

Q. Mr. Eccleston, what is your occupation? A. I am an attorney at law.

Q. Where were you employed in the year 1892? A. In the office of Thomas J. Fischer and Company, 1324 F street.

Q. And what was your connection with that office? A. Well, I was clerk.

Q. At that time were you acquainted with Colonel Gilbert Moyers? A. Yes.

Q. State whether you know, of your own knowledge, that Gilbert Moyers rented or leased offices through Thomas J. Fischer and Company at that time?

Mr. BIRNEY: That is objected to as irrelevant and incompetent.

A. He did.

Q. What offices? A. He rented the second floor of prem-
356 ises 1305 E street, northwest.

Q. When did he surrender his tenancy of those offices? A. He vacated on the 31st, of December, 1892.

Cross-examination.

By Mr. BIRNEY:

Q. How are you able to give the dates, Mr. Eccleston? A. Well, I refreshed my recollection of the day by going to the office of Thomas J. Fisher and Company and looking at the books. The entry which I made myself and was made in my own handwriting.

Q. What was the entry? A. The usual entry, vacated December 31st, 1892.

Q. Then you are testifying as to the date from the entry in that book? A. As I made it there at that time.

Mr. BIRNEY: The testimony of the witness is objected to as clearly incompetent.

Re-direct examination.

By Mr. TUCKER:

Q. State, Mr. Eccleston, what your independent recollection of that is as refreshed by your examination of the entry that you made?

Mr. BIRNEY: That is objected to unless the record is produced.

A. My recollection is that Mr. Moyers did occupy the premises up to the latter part of the year 1892.

357 Re-cross examination.

By Mr. BIRNEY:

Q. How are you able to fix the year? A. Well, it would take a little explanation. Mr. Moyers was very delinquent as a rent payer.

Mr. BIRNEY: That is objected to as not in any way responsive to the question.

A. (Continuing:) Well, of course where I would not notice a tenant that would pay his rent promptly, it would be impressed more upon my mind when he did not pay so promptly.

Q. That might impress upon your mind that he was a tenant, but I asked you how are you able to fix the year from recollection? A. You mean by independent recollection, irrespective of looking at the books, ha?

Q. Yes, sir, your independent recollection? A. I can recollect he was a tenant there in 1892.

Q. How do you know it was not 1891? A. I could not say positively—I could not say positively that it was 1892 outside of refreshing my recollection of it.

By Mr. TUCKER:

Q. After refreshing your memory, as you did, Mr. Eccleston, by examining that entry that you made, are you willing to swear that Mr. Moyers vacated those premises, 1305 E street, on the 31st of December 1892?

Mr. BIRNEY: Objected to for the same reasons heretofore given.

A. I certainly am.

CHAS. A. ECCLESTON.

Signed by the examiner by consent.

J. ARTHUR LYNHAM, *Examiner.*

358 Mr. TUCKER: The solicitor for the complainant here offers in evidence the affidavit- of John C. Scott and Ezra Nat Hill, which are attached to the answer of the defendant Gilbert Moyers to the bill of complaint in this cause, for the purpose of impeaching and contradicting their testimony as witnesses, and upon the ground that such affidavits and the depositions of said affiants as witnesses contain conflicting and contradictory statements, and the same will be read at the hearing.

WEDNESDAY, *May 16th*, 1900—4 o'clock p. m.

Met, pursuant to agreement, to resume the taking of testimony in rebuttal on the part of the complainant.

Present: Charles Cowles Tucker, Esq., of solicitors for the complainant, and Arthur A. Birney, Esq., solicitor for the defendant.

Whereupon JOHN R. CARMODY, a witness of competent age, produced on the part of the complainant in rebuttal, and being first duly sworn, was examined and testified as follows:

Direct-examination.

By Mr. TUCKER:

Q. You are a resident of the District of Columbia, Major? A. I am.

359 Q. Were you connected with the Washington Loan and Trust Company in 1895? A. I was, in the capacity of treasurer.

Q. Were you acquainted at that time with Gilbert Moyers? A. I was.

Q. Was he at that time, and prior thereto, a tenant of the Washington Loan and Trust building? A. He was.

Q. When he ceased to become a tenant did he owe the trust company any money for rent? A. Yes.

Mr. BIRNEY (to the witness): That is, in 1895?

The WITNESS: Yes, 1895.

Mr. BIRNEY: That is objected to, as it can have no relation to the subject matter of this suit.

Q. How much?

Mr. BIRNEY: Objected to on the same ground.

A. He gave a note for $212.21 in June of that year, 1895.

Q. Was that note given for arrears of rent? A. Yes, sir.

Q. Do you recall how much his rent was a month? A. It must have been in the neighborhood of eighty dollars, I am not positive about that. The record will show.

Q. Prior to that time, had you had any trouble in collecting rent from Mr. Moyers?

Mr. BIRNEY: Objected to as immaterial.

A. Yes, we had considerable difficulty with him in that respect.

Q. State whether or not he was at any time during his tenancy largely indebted to the trust company for rent?

360

Mr. BIRNEY: Objected to.

A. Yes; at one time I think I secured seven hundred dollars—at least seven hundred dollars in arrears: but he was for a couple of years in hard luck and plead poverty. When he first entered he was prompt, and afterwards, as I say, he seemed to be in straightened circumstances. He plead straightened circumstances, and there was considerable due him from the Government at different times.

Cross-examination.

By Mr. BIRNEY:

Q. Was this straightened condition at the last of his tenancy? A. Well, I think it spread, over at least a year, and perhaps more.

Q. That is to say, the last year of his tenancy? A. Yes, at least that, and possibly back of that.

Q. Before that time he had been prompt? A. Yes, when he came in, in February, I think, 1893, along there he was quite prompt.

Re-direct-examination.

By Mr. TUCKER:

Q. On one occasion, however, he was in arrears over seven hundred dollars? A. Yes.

Q. And when he went out he was in arrears $212.21? A. Yes; he gave a note in settlement of arrears in going out of $212.21.

361

JOHN R. CARMODY.

Signed by the examiner by consent.

J. ARTHUR LYNHAM, *Examiner.*

Thereupon H. LE ROY MARK, having been heretofore duly sworn, was recalled and further interrogated.

Direct-examination.

By Mr. TUCKER:

Q. Mr. Mark, you testified at the last session that the rent books of the Washington Loan and Trust Company showed that Mr. Gilbert Moyers' rent had been settled. Do you desire to add anything to your testimony, or to explain it in any way? A. Well, I made a provision there that possibly that rent had been paid by a

note and posted on this tenants' register which only acts as a blotter and not a cash book.

Q. Well, have you since found that to be the case? A. Well, I have since found that he paid by a note and not in cash.

Q. Has that note ever been paid? A. Not to my knowledge.

Cross-examination.

By Mr. BIRNEY:

362 Q. Have you any knowledge of that at all? A. I have seen the note and have seen that it has not been paid.

Q. When did you see it? A. I saw it just a few minutes ago. Mr. Tucker has it in his hand now.

H. LE ROY MARK.

Signed by the examiner by consent.

J. ARTHUR LYNHAM, *Examiner.*

At this point an adjournment was taken until to-morrow, Thursday, May 17th, 1900, at 3 o'clock p. m.

363 I certify that the foregoing depositions (comprising 38 typewritten pages) were taken down by me in shorthand, as an examiner in chancery, from the statements when and as uttered by the deponents thereof; that the same were thereafter transcribed and reduced by me into print, and thereupon subscribed by me for said witnesses, pursuant to agreement of counsel first had and obtained.

I further certify that my fee of $22.00 for taking, certifying and returning said depositions has been paid to me by the complainant, and that the same is just and reasonable.

And I further certify that I am not of counsel, nor in anywise interested in this cause.

J. ARTHUR LYNHAM, *Examiner.*

364 Thereupon G. W. Z. BLACK, heretofore sworn as a witness on behalf of the defendant, was produced as a witness on the part of the complainant in rebuttal, and testified as follows:

Direct-examination:

Q. How long have you been practicing law, Mr. Black, in this city? A. Well, since—I have been practicing before the departments and before the Court of Claims for about twenty-five years and before the Court of Claims proper for—I do not know—ten years I suppose. I do not know the time exactly.

Q. That is all I want, about the approximate time. Were you acquainted with the late George B. Edmonds? A. I had some acquaintance with him, not extensive.

Q. Please state briefly the extent of that acquaintance, how you made his acquaintance and how well you knew him? A. Well, I saw him about the Court of Claims and met him on the street to talk with him a few times, not often and I think I saw him in my office probably two or three times during his life.

Q. Do you recollect about when your acquaintance with him began? A. Well, it was, I think, along somewhere about 1885 or 1886. Somewhere in there. It might have been a year earlier or later, I do not know.

365 Q. And over how many years did your acquaintance extend as nearly as you can recall? A. Well, I should think a period of about five years.

Q. Did you know him in 1891 and 1892 as nearly as you can recall? A. I think I did.

Q. At that time from your acquaintance with him and your knowledge of him gained from your conversations with him, please state in your opinion what was the mental condition of Mr. Edmonds?

Mr. BIRNEY: Objected to since it does not appear that the witness had sufficient opportunity to form an opinion.

A. Well, my opinion of him was that he was a man of rather weak mind and apparently inoffensive.

Q. What can you say of his capacity to conduct business matters or to make contracts? A. Well, you know that is a matter largely of opinion.

Q. I ask for your opinion. A. You do.

Q. Yes, sir, the question is as to what your opinion in that respect is? A. Well, it is a difficult question to answer. As I stated before he was an inoffensive fellow and either had very little business capacity or else he was indolent or not altogether competent or a combination of the whole thing. It is difficult to analyze it. It is very difficult. He had a number of cases on the docket at

366 the court and he did not seem to do anything himself with them.

Q. Do you know who acted for him in those cases? A. Well, so far as I saw, Col. Moyers, I think—in fact Edmonds told me that on one occasion, probably twice, when I could see from the docket that Col. Moyers' appearance was entered in a great many of his cases.

Cross-examination.

By Mr. BIRNEY:

Q. Mr. Black, did you have any business transactions with Mr. Edmonds? A. I had one business transaction.

Q. When was it? A. I could not remember the date. I could tell—I have papers in my office.

Q. Can you give us the year? A. I could not. I can produce the papers, if you give me time.

Q. Can you approximate the time now? A. No, I could not. Some years ago.

Q. The period we are talking about was some years ago. Was it in 1891 or 1892? A. I could not tell without looking up the papers. I can tell by them.

Q. What was the transaction? A. Why, it was a claim of a client of his in Arkansas.

—. And what was done with it as far as you were concerned? A. He sold me his fee.

367 Q. At that time did you regard him competent to transact business? A. I thought *it* was.

Q. What was his condition at that time. Any different from what it was at other times when you saw him? A. I think that his condition generally was about the same. He was a man that did not have much to say and he was never demonstrative that I know of.

Q. Then you regarded him as competent to transact business? A. Yes, sir; he was at my office—that was the only time I ever saw him—two or three times—he came to my office four or five times. I did not want to go into the transaction but he came to me repeatedly and finally I consented to buy the fee. He seemed to talk rationally.

Q. You regarded him then as rational and competent to transact business? A. Yes, sir.

Q. What was the condition of that case at the time you dealt with Mr. Edmonds? A. I- was a peculiar kind of case. It was a case for a loss of a boat or vessel and there had been a finding by the court and the court had turned the case—they had made a finding and it was a peculiar kind of case.

Q. That finding allowed a p.rt of the claim? A. Yes, sir.

Q. And was it after that that you dealt with Edmonds? A. Yes, sir.

Q. Then the case was waiting at that time for an appro-
368 priation by congress to pay it? A. Yes, sir.

Q. And that appropriation was made by the act of 1891? A. I presume it was, yes, sir.

Q. Can you refresh your memory in that regard? Can you tell us how long before the passage of the act of 1891 and before the appropriation was made that you dealt with him? A. I could not—I can tell if you allow me to go to my office. I could not tell you now. It has been nearly ten years ago. It passed from my mind and I would not pretend to give the date, but I can give the date.

It is agreed that the witness furnish the examiner the date in question.

Re-direct examination.

By Mr. TUCKER:

Q. Mr. Black, how much money did you pay Edmonds at that time? A. I paid him $200. I think.

Q. What was the amount of the claim? A. The claim was—the amount of the claim was $4400.

Q. How much was the amount appropriated? A. I think that was the amount allowed.

Q. What was the fee agreement? A. I think it was fifty per cent.

Q. And you bought Edmonds for—— A. It was either $200. or $400.

369 Q. You will furnish that information? A. Yes, sir.

Q. You bought the claim after the findings of the Court of Claims and before the appropriation was made? A. Yes, sir.

GEO. Z. BLACK.

Subscribed and signed for the witness by me by consent and agreement of counsel this 21 day of May, 1900.

MASON N. RICHARDSON, *Examiner.*

WASHINGTON, D. C., *May 22nd*, 1900—2 o'clock p. m.

Met pursuant to adjournment at the law offices of Messrs. Birney and Woodard, Mertz building, to take further testimony for and on behalf of the defendant,

Present: Same parties.

Whereupon HORACE S. CUMMINGS, the complainant, having been heretofore sworn, and being re-called, testified as follows:

By Mr. TUCKER:

The solicitor for the complainant states that the following questions which are to be propounded to the complainant, as a witness, will relate to the question of the mental competency of George

370 B. Edmonds, deceased. Mr. Cummings, was not heretofore examined upon the subject because of the belief that his testimony upon this subject would be incompetent under section 858 of the Revised Statutes, but in view of the fact that the defendant has testified upon this subject the complainant will be examined thereupon leaving it to the court to determine at the hearing as to the competency of the testimony of the complainant, and the defendant to testify under the circumstances of this case.

Mr. BIRNEY: Objected to as irregular and because the witness has heretofore been interrogated and has testified upon the subject indicated.

Q. Mr. Cummings, how intimate was your acquaintance with the

late George B. Edmonds, during his life time? A. My acquaintanceship with George B. Edmonds commenced about 1871 or 1872 when he came to this town, in accordance with the request of Mr. Williamson, who was Commissioner of the Land Office and he appointed him or rather the Secretary of the Interior, Mr. Kirkwood, on Mr. Williamson's recommendation, appointed him as the law attorney of the Land Office and from that date to the date of his death I have been acquainted with him or was acquainted with him. That acquaintance grew as time went on.

Q. Was your acquaintance intimate or otherwise? A. Intimate rather than otherwise. In other words, he seemed to tie to me.

Q. From your knowledge of him or your acquaintance with him please state what in your opinion was his mental condition and capacity between 1891 and the date of his death?

371 Mr. BIRNEY: If by this inquiry the witness is desired to state the results of conversations had with the said George B. Edmonds counsel for the defendant objects.

Q. Answer the question, Mr. Cummings? A. Mr. George B. Edmonds had a *check* he received in 1891. His mind seemed to be all gone. He could not talk ten minutes consecutively on the same subject sensibly or reasonably. He would go back and he would repeat and he would inject things in his statements that had nothing to do—something entirely different—some other subject entirely, and would *and* commence and go right through the whole thing. In matters of business he was a simple child. He used to come in my office during that period very frequently. Sometimes every day for a week and then he would not come in for a week until it became notorious among the people who were there that they wanted to know how my lunatic was getting along.

Mr. BIRNEY: Objected to as a statement of hearsay declarations.

Q. State whether in your opinion he was between the years 1891 and the time of his death capable of making a valid deed or contract? A. He only was not capable of making a valid deed or contract, but he was not capable of making or doing the slightest business. I used to have to buy everything for him from stockings and his shoes and food, everything.

Cross-examination.

By Mr. BIRNEY:

372 Q. You have spoken of his having had a shock in 1891. What time in 1891 was it? A. I think in the month of January.

Q. Have you any way of refreshing your recollection? A. Oh no, but I say it was latter part of January.

Q. Why do you fix the latter part of January as the month? A.

I simply because I know that it was along in February I took him right from his room that he had been sick in up to the Homeopathic hospital—1891—you mean 1891?

Q. Yes, sir. *Q.* Well, simply I stated from the ordinary observation and intercourse with the man.

A. I am asking about the dates?

(The question is hereupon read over to the witness.)

A. Because it was at that time that he—simply because it was January 1891. He got so bad and was incapable of doing anything for himself that his friends said that he must be under guardianship.

Mr. BIRNEY: Objected to as not responsive to the question and statement of what other people said is not competent.

Q. And when he was adjudged a lunatic he seemed to grow worse, rapidly worse, so much so that for instance I gave verbal notice to the chief of police to please keep look out for Mr. Edmonds.

Mr. BIRNEY: Objected to as not responsive. I have asked how you fixed the date?

A. From the fact that he had been adjudged a lunatic by the court.

Mr. TUCKER: I do not think Mr. Cummings understands your question.

Q. What enables you to fix the month and the year which
373 he received the shock which as I understand was a paralytic shock or some similar stroke? A. He had paralytic stroke.

Q. What kind of shock was it you refer to? A. I refer to the shock he received in 1895. That is what I thought—he had a shock then.

Q. When did he receive the first shock as you term it? What was its nature? A. That was sometime in 1873. I should say it was about 1873—about 1883.

Q. What was its nature? You have not answered the last part of the question. A. I think the doctor called it apople-tic. I could not be sure.

Q. What was his condition after that? A. There was no change in his condition except a very slight one for two or three—several years after that, but he became so bad—though perhaps not perceptible, to the ordinary observer that the Secretary of the Interior, Mr. Kirkwood, who was a townsman of his advised him to give up——

Mr. BIRNEY: Objected to as not within the knowledge of the witness.

A. And he was appointed as timber inspector in the South—mostly in Alabama and Mississippi.

Q. What was his condition during the three years following 1883 when you say he had his shock? A. While his condition was practically the same as it was before he seemed to recover though he did not have the physical strength that he had before.

Q. When did you observe a failing in his mental powers?

374 A. I should say along about 1889 or 1890 it became evidence.

Q. What caused that failing? A. I could not tell. I observed the fact.

Q. Did he have any other shock. If so when and what was it? A. Not that I know of until the shock of 1895.

Q. The two shocks of 1883 and 1895? A. Yes, sir.

Q. What was your immediate cause of your taking occasion to have him declared a lunatic in 1891? A. I did not take the occasion to have him declared a lunatic myself, but it was done on the suggestion of his relatives and as I understand that Doctor Goodlove, who had been brought into contact with him was a man who took the immediate action. Of that I am not sure. All I know that Dr. Goodlove came to me and asked me——

Mr. BIRNEY: Objected to as incompetent.

A. And asked me if I would be willing to be the commissioner or guardian of Mr. Edmonds. I asked why and he said that he did not consider that it was safe for him to have charge of his own affairs and his brother Commissioner Edmonds——

Mr. BIRNEY: That is all incompetent to burden this record with hearsay.

Q. How long before that had you noticed a failing in Mr. Edmonds' powers? A. I had not noticed it so much until 1889 because after—before 1888—between 1885 and 1888 I did not see so much of him. Though I saw him frequently.

375 Q. How frequently? A. Sometimes I would see him every day and sometimes I would not see him for a month.

Q. How frequently did you see him after? A. Quite frequently.

Q. More frequently than you have stated just now? A. Much more frequently.

Q. More than daily? A. Probably not.

Q. Did you not have abundant opportunity to examine his condition between 1883 and 1887? A. I did not.

Q. Did you not see him very frequently? A. I saw him frequently and I think most of the talk would be about the day—perhaps a little talk, but nothing of any account.

Q. That was the extent of your communication after that? A. No, sir; he came in my office and staid by the hour.

Q. Did you have any business with him? A. No, sir, no business in any shape or form except——

Q. When did he begin to come to your office and stay by the hour? A. Oh, mostly in 1890.

Q. Not before that time? A. He would come, but not to make any stay.

Q. He was in your office frequently before that time? A. Yes, sir, I would see him frequently, not nearly as frequently as I did after.

376 Q. When did his employment for the Government cease? A. I could not tell. I could imagine sometime in 1885—possibly it was 1884. I could tell you many things that would not probable be testimony. You probably would object to it.

WITNESS (making further statement): I want to qualify the statement of his being in my office frequently. I mean, of course, when he was in the city, because I have already testified that he was out of the city quite a while in 1889 and '90.

By Mr. BIRNEY:

Q. You have testified that you paid Mr. Edmonds' bills? A. I did.

Q. Did you pay them to the persons to whom he had incurred the debts or did you pay them to him? A. Some I did and some I did not.

Q. Did you take any vouchers for any payments you made? A. In some cases I did and some I did not. I kept a memorandum schedule and I presented that schedule. Whether it comprised all the items I cannot say. That was presented to the court—before the auditor.

Q. That was a statement of account as committee? A. Yes, sir.

Q. I show you now the paper taken from the files in the lunacy case of George B. Edmonds, No. 12,926 accompanied with an affidavit by you and ask you if that is the paper you refer to in the last answer?

(Handing witness paper.)

A. It is.

377 Mr. BIRNEY: It is already in evidence.
Mr. TUCKER: Yes, sir.

Q. Did you testify before the auditor at the time of the settlement of your accounts? A. I did.

Q. Did you file any vouchers at all with him? A. I won't be sure.

Q. Look at the paper before you and say whether you did or not? A. By this it would appear that I did not file vouchers for the specific items.

Q. Is it not the fact that you paid the money for board and clothing and other expenses, for living, to Mr. Edmonds himself to be by him disbursed? A. In some cases I did.

Q. Did you not do it as a regular and general thing. Did you not give that as a reason for not producing any vouchers before the auditor in stating your account? A. Mr. Edmonds would come to me and say, Mr. Cummings my board is due and I would ask, George, how much it is and I would give it to him. He would then say I must have some new stockings—I must have some clothes. I would say Go and see what you want and what they cost and he would go and I would ask him where—do you — if that is a good place, so and so—perhaps go to such and such a place. He would say I can get what I want for so much and I would take and give him the money and he would get it. He was a man who was perfectly honest in my opinion.

378 Q. And perfectly capable of transacting all business of that kind? A. Undoubtedly he was of that kind or I would not have trusted him for such a small amount of money in each case I absolutely knew the amount that he wanted and for which it was going and then I would go around to the place where he lived or boarded and ask if the debts were paid.

Q. Did you then take any vouchers at all or is it not a fact that you paid all the money or substantially all the money on his behalf through Mr. Edmonds himself? A. I would say the greater part I did.

Q. You regarded him as able to state to you intelligently and truthfully what his debts were? A. I would say that he would state everything truthfully, but as to whether everything was intelligibly I could not say, but in each case where I paid him it was for a specific sum and I knew what that sum was and I knew how much he paid for room and board. I knew what the bills were.

Q. He, however, transacted the business of paying for his board and paying for his clothing and paying for his other supplies? A. He did as a rule. I trusted him simply as a matter of pride on his part, because he felt hurt. A man who's insane is the last man to acknowledge it.

Mr. BIRNEY: I object to your argument. I have asked you for the fact.

Mr. TUCKER: I object to all this testimony.

HORACE S. CUMMINGS.

379 Subscribed and signed for the witness by me by consent and agreement of counsel this 24th day of May, 1900.

MASON N. RICHARDSON, *Examiner.*

JOHN W. BUTTERFIELD, a witness for the complainant, heretofore sworn, being recalled, testified as follows:

By Mr. TUCKER:

Q. Mr. Butterfield, you have heard Col. Moyers' testimony with respect to the statements alleged to have been made by you to him regarding an alleged assignment by George B. Edmonds to Mr. Cummings dated about 1895. What have you to say as to that statement? A. I want to correct Mr. Moyers in his statement. Mr. George B. Edmonds so far as my knowledge goes, never made any assignment to Mr. Cummings—none shown to me. The assignment which I showed to Mr. Moyers was from his brother the sole heir. Knowing that Mr. George B. Edmonds had been a long invalid——

Q. You mean James B. Edmonds? A. He had no debts, but I thought we might settle the matter by an assignment of Judge Edmonds to Mr. Cummings without the expense of taking out letters.

When I discovered that Mr. Moyers was disinclined to come
380 to any agreement in regard to that, that is accepting the assignment, I advised Mr. Cummings to take out letters of administration and calling on Mr. Moyers subsequently I carried the letters of administration and told him that now we stood on legal ground and could talk business.

Q. Did you ever state to Mr. Moyers that Mr. Cummings had received an assignment at any time from George B. Edmonds? A. No, sir, that never entered my mind. I never heard Mr. Cummings intimate anything of that sort or shape. The assignment was from Judge Edmonds, his brother.

Q. The point is did you ever make a statement to Col. Moyers that Mr. Cummings had an assignment from George B. Edmonds? A. Never. No, sir, no. Mr. Moyers is mistaken on that point.

Subscribed and signed for the witness by me by consent and agreement of counsel this — day of —— 1900.

—— ——, *Examiner.*

381 G. W. Z. Black, attorney-at-law.

MAY 22, 1900.

DEAR SIR: I have continued my search as far as my time would permit, but have not yet found the papers in the Edmonds matter. The papers are old and dusty and it is a tedious & disagreeable task. I am sure the transaction was some time in the year 1890. I will unearth the papers as soon as I can as they are neither lost or destroyed.

Y'rs truly, G. W. Z. BLACK.

E. L. Wilson, Esq., Fendall building, city.

382 COMPLAINANT'S EXHIBIT IN REBUTTAL No. 1.

Filed May 22, 1900.

A. B. Richardson, M. D., superintendent.

Government Hospital for the Insane. H.

WASHINGTON, D. C., *March 3rd*, 1900.

Messrs. Davis & Tucker, Washington Loan & Trust building, Washington, D. C.

GENTLEMEN: In reply to your letter of inquiry of the 28th instant, I have to state that George B. Edmonds was under treatment in this hospital, from August 3rd, 1893, to September 9th, 1893, suffering with chronic dementia for one year's duration on admission, cause-by apoplexy; and was discharged as improved.

The foregoing information is given with the understanding that it is not to be used as evidence in the prosecution of any pension or other claim against the U. S. Government.

Very respectfully, A. B. RICHARDSON,
Superintendent.

383 COMPLAINANT'S EXHIBIT IN REBUTTAL No. 2.

Law offices of Davis and Tucker.

WASHINGTON, D. C., *March* 17, 1900.

Superintendent Soldiers' Home, Hampton, Virginia.

DEAR SIR: We are informed that one George B. Edmonds was an inmate of the Soldiers' Home at Hampton, Virginia, some time during the years 1891 and 1895, and we desire to ascertain whether this be true. Will you kindly advise us whether your records show that Mr. Edmonds entered the home and if so, the date of such entry and the date of his discharge.

This information is not sought for the purpose of establishing, nor will it be used in anywise to establish any claim against the United States, but is to be used only in a suit by the administrator of Mr. Cummings against an individual in this city, to collect a debt due the estate of Mr. Edmonds.

Thanking you in advance for your courtesy, we are

Very truly yours, DAVIS & TUCKER.

(Endorsed:) Southern branch National Home for D. V. S., Mar. 19, 1900, Respectfully returned Davis & Tucker Washington Loan & Trust building, Washington, D. C. with information that the records of this office show that Geo. B. Edmonds was admitted to this home July 27, 1889, & discharged from same — his own request, February 5, 1890. By direction — the governor A. A. Hager, adjutant H.

384 COMPLAINANT'S EXHIBIT IN REBUTTAL NO. 3.

Law office of Gilbert Moyers.

WASHINGTON, D. C., *May* 26, 1899.

H. S. Cummings, Esq., 1416 F St. N. W., city.

DEAR SIR: Enclosed I hand you check for $112.50 on account of Mr. Hill's assignment of his interest in the Throckmorton fee.

As to the cases of Mr. Edmonds which I have in charge, as I advised you recently I have advanced him considerable money and besides have incurred heavy expense in the prosecution of claims rejected as well as in those allowed. I have not had time to make up the account yet, but will do so just as soon as I have an opportunity. The contests I have for my fees in different cases occupy nearly all of my time, in fact my clients are acting very badly. Please acknowledge receipt.

Yours truly, GILBERT MOYERS.

Enc.

385 COMPLAINANT'S EXHIBIT IN REBUTTAL NO. 4.

Office of High & Stone, dealers in general merchandise.

TUPELO, MISS., *Apr. 9th*, 1886.

Geo. B. Edmonds, Esq., Washington, D. C.

DEAR SIR: Your favor of 21st Jan., with circular &c. has been received. I am the original claimant in whose name the claim was filed as you will find it in the department, and as I have already been at some expense in the preparation & filing of the claim I am anxious to realize something from it.

I accept your proposition and hope you will prosecute the claim for me to the best advantage.

Very truly. SUSAN MERRILL.

Envelope addressed:—

GEO. B. EDMONDS,
Attorney at law,
1810 *K Street N. W.,*
Washington, D. C.

386 *Order Referring Cause to Auditor.*

Filed May 9, 1901.

In the Supreme Court of the District of Columbia, Sitting as an Equity Court.

HORACE S. CUMMINGS, Administrator, etc., Complainant, *vs.* GILBERT MOYERS, Defendant. } In Equity. No. 20802.

Upon consideration of the motion of the complainant herein filed on the 27th day of February, 1901, and of the answer of the defendant to the rule laid upon him by this court on the 15th day of January, 1901, to show cause why he should not be punished for contempt of court for his failure to obey so much of the order of the court passed on the twentieth day of June 1900, as required him, the said defendant, to deliver from the moneys theretofore collected by him on account of the fees paid by the claimants in the partnership claims described in the bill of complaint herein, the sum of nine thousand dollars ($9,000) and also upon consideration of the affidavits filed by the respective parties in support of said motion and of said return, and after argument by counsel for said parties, it is by the court this 9th day of May, 1901, ordered that said motion be and the same is hereby granted; and that in the matter of said alleged contempt the cause be and it is hereby referred to the auditor of this court for an examination of said defendant upon written or oral interrogatories to be exhibited or propounded on behalf of said complainant, and for the taking of such further proofs
387 before the auditor as either party may deem proper to produce, all of said testimony and proofs to be returned to this court with the report of said auditor thereupon.

And said auditor, after said examination shall be made and said proof, if any, shall be taken, is hereby directed to report to the court the gross amount of money collected by the defendant on account of fees in each and every of the claims mentioned and described in Exhibit No. 1, attached to the bill of complaint herein and in the tenth paragraph of said bill, and what, if any disposition has been made by said defendant of said money; and if it shall appear that said money or any part of it, or any money with which said money collected as aforesaid on account of said fees, may have been commingled by said defendant; or was invested by said defendant in any property, security or securities; or that it was used in the purchase of any real or personal property, or in the payment of any indebtedness or indebtednesses upon any real or personal estate owned by or in the possession and control of said defendant, all facts in relation

thereto, shall be ascertained and reported to the court by said auditor.

And it is further ordered that the said defendant be and he is hereby directed to submit himself to said examination within five days after the passage of this order, and that upon the conclusion of said examination the complainant shall have ten days within which to produce other or further testimony in the premises; and that after the conclusion of the complainant's testimony, the defendant shall have ten days within which to reply thereto, and that complainant shall have five days within which to take testimony in rebuttal after the defendant shall have closed his testimony.

A. B. HAGNER,
Asso. Justice.

388 *Report of Auditor.*

Filed June 29, 1901.

In the Supreme Court of the District of Columbia.

HORACE S. CUMMINGS, Administrator, &c., *vs.* GILBERT MOYERS. } No. 20802. Equity, Docket 47.

This cause is referred to me to ascertain and report to the court the gross amount of money collected by the defendant on account of fees in each of the claims described in Exhibit No. 1, attached to the bill of complaint; whether any disposition has been made by said defendant of said money, and if it shall appear that said money, or any part of the same, collected by said defendant may have been commingled, whether it was invested in any property or securities, or was used in the purchase of real or personal property or in payment of any indebtedness upon real or personal estate owned by, or in the possession and control of said defendant, to report all facts in relation thereto. After due notice I proceeded with the reference and return herewith the testimony and exhibits submitted in proof.

In the schedule herewith I have stated an account of the fees collected by the defendant as directed by the order of reference.

The proof establishes the following facts as to the disposition, commingling, and investment of these moneys. The greater portion was deposited from time to time in bank with other moneys of the defendant, from which moneys so commingled certain sums were drawn out and used for the purposes hereinafter named, while
389 other and smaller portions of the said moneys were placed in the safe or pocket of the defendant and there commingled with other moneys and used in common with the same for various purposes.

On the 8th of May, 1899, the said defendant had received fees in the cases specified in the decree, aggregating the sum of $18,321.48.

On that day he paid out the sum of $11,868.25 in discharge of incumbrances covering lot 56 in square 988 which was the residence property of the defendant; also a parcel of unimproved property located at the corner of Eighth street and Massachusetts avenue, northeast, which was the property of Mrs. Moyers. In this connection I note that in June 1900, the parcel first named as the residence property was conveyed by Moyers to his wife.

At some date not definitely fixed in the proof, but subsequent at least to the collection of the fees in the Fitzhugh case, amounting to $7,952.73, the defendant paid off an indebtedness of $7,000.00 on property located in Maryland near the town of Bladensburg and described as the Carlton Mill property; he also expended on the same property about $3,000.00 exclusive of $1,100.00 or $1,200.00 expended specially on the mill race and dam.

In March 1899, or prior thereto, the defendant was the owner of lots numbered 13 to 17 inclusive, in square 714, and subsequently to the 17th of March, 1899, he improved these lots by the construction of a number of buildings at a cost of about $11,000.00.

This property in square 714 and the property described as the Carleton Mill property are still owned by the defendant.

390 It is evident from the facts disclosed in proof that the moneys collected by the defendant on account of fees in the claims described in Exhibit No. 1, attached to the bill of complaint were commingled with other funds from which the defendant paid off the indebtedness upon the Carleton Mill property and paid for the improvements made upon that property, and also paid the cost of construction of the dwellings or buildings on lots 13 to 17 inclusive, in square 714.

JAS. G. PAYNE. *Auditor.*

Fee 20
Testimony 18

391 SCHEDULE.

Account of Fees Collected by the Defendant in Claims Described in the Tenth Paragraph of the Bill of Complaint and in Exhibit No. 1, Attached to the said Bill.

1899.				
March	17.	Claim of S. Fitzhugh administrator:		
		Gross fee	9,950.23	
		Expense	1,997.50	
		Net fee		7,952.73
April	8.	Claim of S. Bagnall, administrator,		348.25
	19.	Richard Butler		61.00
	19.	Jasper Gall		352.00
	20.	Anna Hunt, administratrix:		
		Gross fee	9,722.50	
		Expense	115.00	
				9,607.50
	23.	Claim of J. Hornbaker		146.25
June	1.	Claim of J. Harding, administrator:		
		Gross fee	970.00	
		Expense	15.20	
				954.80
	7.	Claim of W. Williams, administrator		118.00

392 SCHEDULE.

Account of Fees Received—Continued.

1899.				
June	17.	Claim of Mrs. H. E. Ladd:		
		Gross fee	492.50	
		Expense	35.70	
				456.80
	17.	Claim of N. K. Thornton		335.00
	19.	Claim of W. R. Welborn		100.00
	26.	Claim of J. G. Tappan, administrator		1,050.00
July	10.	Claim of J. P. Davidson		457.50
Aug.	4.	Claim of Henry T. Cate:		
		Gross fee	417.50	
		Expense	10.00	
				407.50
	10.	Burgwyn administrator		68.75
1900.				
[Jan.	25.]	Claim of William T. Fauber		150.00
				$22,566.08

JAS. G. PAYNE, *Auditor.*

393–411 *Order Cancelling Bond, &c.*

Filed November 25, 1901.

In the Supreme Court of the District of Columbia.

HORACE S. CUMMINGS, Administrator,
vs.
GILBERT MOYERS.
} No. 20802, Equity Docket.

Upon motion of the defendant, and complainant by his counsel consenting thereto, it is this 25th day of November, 1901, ordered that the bond heretofore given by the defendant Gilbert Moyers and the Fidelity and Deposit Company of Maryland as a supersedeas upon the appeal of the said Moyers from an order of the court passed herein on June 20, 1900, be and the same is hereby vacated and cancelled, and the obligators thereon released from all liability thereunder.

By the court:

A. B. HAGNER,
Asso. Justice.

We consent.

DAVIS & TUCKER,
Counsel for the Complainants.

* * * * * * *

412 *Certified Copy of Treasury Warrant, &c.*

Filed June 7, 1902.

Miscellaneous division.

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY, WASHINGTON, *June* 6, 1902.

25912

60–EK

The clerk of the supreme court of the District of Columbia, Washington, D. C.

SIR: I have to acknowledge the receipt of an order of the supreme court of the District of Columbia, entered in the case of Horace S. Cummings, administrator, *vs.* Gilbert Moyers, in equity No. 20,802, requesting copy of warrant No. 184, issued July 12, 1899, to John Ehs, and statement showing to whom the said warrant was delivered.

In compliance with the request, find herewith certified copy of the warrant, and certified statement of the Treasurer of the United States that the warrant was delivered to Gilbert Moyers by C. N. Wilson.

Respectfully,

H. A. TAYLOR,
Assistant Secretary.
L. J.

413 Filed June 7, 1902.

UNITED STATES OF AMERICA:

TREASURY DEPARTMENT, *June* 6, 1902.

Pursuant to section 882 of the Revised Statutes, I hereby certify that the annexed is a true and correct copy of the original on file in this department.

[SEAL.] In witness whereof, I have hereunto set my hand, and caused the seal of the Treasury Department to be affixed, on the day and year first above written.

L. M. SHAW,
Secretary of the Treasury.
L. J.
S. M. G.

414 Copy.

No. 184.

Warrant.

Treasury. Settlement. M Y M

UNITED STATES TREASURY DEPARTMENT,
WASHINGTON, D. C., *July* 12, 1899.

To the Treasurer of the United States:

Pay to Jones S. Hamilton—adm'r of John Ehs, dec'd—or order six hundred twenty-seven dollars, $627.00

C W M

H. A. TAYLOR,
Assistant Secretary.

Countersigned

R. J. TRACEWELL,
Comptroller.

The Treasurer, U. S. Washington, will pay this warrant.

ELLIS H. ROBERTS, *Treasurer.*

By C. M. FOREE,
Chief Clerk.

Certificate No. 52,562.
C. A. B.

P. O. address, care Gilbert Moyers, att'y.

Endorsed.

The indorsement of this warrant must be technically and legally perfect or the officer on whom it is drawn will refuse payment thereof.

Indorsements by mark (X) must be certified to by two witnesses, giving their places of residence.

Pay to the order of National Metropolitan Bank, Washington, D. C.

415 THE NATIONAL PARK BANK OF N. Y.
GEO. S. HICKOK, *Cashier.*
EDW. J. BALDWIN, *A. C.*
JONES S. HAMILTON,
Adm'r John Ehs, Dec'd, Estate.
NATIONAL METROPOLITAN BANK.
J. GALES MOORE, *Ass't Cashier.*

Aug. 8, 1899, Washington, D. C.

Pay National Park Bank, New York, or order

CAPITAL STATE BANK, JACKSON, MISS.
E. M. PARKER, *Cashier.*
E. M. PARKER, *Cash'r.*

416 E. H. R. UNITED STATES OF AMERICA,
TREASURY DEPARTMENT, *June* 6, 1902.

Pursuant to section 882 of the Revised Statutes, I hereby certify that the annexed writing is a true copy of receipt for Treasury warrant No. 184 under date of July 13, 1899, given by Gilbert Moyers by C. N. Wilson, the original of which is on file, in this department.

In witness whereof, I have hereunto set my hand, and [SEAL.] caused the seal of the Treasury Department to be affixed, on the day and year first above written.

T. L. M. SHAW,
Secretary of the Treasury.
L. J.
S. M. G.

417 Treasury Department,
Treasurer's Office.—Accounts.
Form 762.—3-8-'99-2 vols.

Receipts for Treasury Warrants.

Date of delivery.	Description of contents.	By whom received.
1899. July 13.....	184.	Gilbert Moyers by C. N. Wilson.

[SEAL.]

418 *Report of Auditor.*

Filed August 20, 1902.

In the Supreme Court of the District of Columbia.

HORACE S. CUMMINGS, Administrator of the Estate of George B. Edmonds, Deceased,
vs.
GILBERT MOYERS.
} No. 20802. Equity.

On the 13th of June 1900, the court passed a decree in this cause adjudging as follows, "That a special partnership existed between the complainant's intestate, George B. Edmonds, and the defendant, Gilbert Moyers, created by the partnership agreement described in the fourth paragraph of the bill of complaint in the above entitled cause, and that said partnership related to the prosecution of the claims mentioned and described in a schedule or list of claims, which was therein referred to as attached to the said partnership agreement."

"That the complainant, as administrator of the said decedent, George B. Edmonds, is entitled to an accounting with the defendant of all partnership dealings and the transactions between the defendant and said decedent after the date of the said partnership agreement of February 6, 1888, and to recover from the said defendant the balance of money shown to be due from said defendant upon such accounting."

The decree then refers the cause to me "to take an account of said partnership dealings and transactions commencing with the 6th day of February, 1888, showing the sum or sums of money collected by the said defendant, and by the said George B. Edmonds

(if any were so collected by him) from time to time on ac-
419 count of said partnership agreement; and to ascertain the sum or sums of money so collected by said defendant, and by the said George B. Edmonds, if any, on account of the fees paid by the claimants, and the amount of the fees which were actually paid by them, and the person or persons to whom they were so paid; the sum or sums of money, if any, paid by the said defendant to the said decedent during the lifetime of said decedent on account of the interest of said decedent in said partnership business; and to report fully the state of the partnership account between the said decedent, or his estate, and the said defendant, the said account and report to be taken and made upon the testimony now in the said cause, with such other and further testimony as may be adduced by the parties thereto."

The decree thus limits the accounting to such claims as were included in the schedule or list of claims which is referred to in the bill of complaint as attached to the said partnership agreement. That agreement is in the following terms, "Agreement. Know all men by these presents, in duplicate, that the undersigned, attorneys of Washington, D. C., are special partners in the prosecution of the cases named in the schedule hereto attached, now pending before the United States Court of Claims and the Congress of the United States, the fee agreed to be paid by the client in each case being the per centum of whatever may be recovered as is stated herein, and the agreement between the undersigned being that each shall have half
of said fees and that each shall pay one half of the expenses
420 incident to the prosecution of the same, which expense is not to exceed two and a half per cent. of the amount that may be allowed upon said claim. And it is hereby agreed and understood that the said Gilbert Moyers shall represent and be associated with me in the prosecution of said claims before the Court of Claims and the Congress of the United States as joint attorney of record. It is hereby understood and agreed that the undersigned Gilbert Moyers is to advance the expenses incident to the prosecution of said claims."

The complainant filed with his original bill a list marked "Complainant's Exhibit No. 1," of cases which he avers were included in the schedule attached to the said agreement and which were prosecuted to judgment and the fees therein collected by the defendant.

The defendant in his answer denies that either of the cases enumerated in the said exhibit to the bill were among those attached to the said partnership agreement, excepting only the cases in which J. C. Tappan and S. Fitzhugh, administrators, respectively were claimants.

The decree of the court finds that there was a schedule or list of claims the prosecution of which was the subject and purpose of the partnership and which was referred to in the said agreement of partnership as attached thereto.

In the taking of the proof of this cause the complainant produced a document made up of one sheet containing what purports to be

one of the duplicate originals of the partnership agreement and nineteen attached sheets containing names of parties, and testifies that the said paper or series of papers was delivered to him by a brother of the decedent Edmonds (who received them from the said Edmonds) about the year 1892, and that the entire list con-
421 tained in the said papers was made by the said Edmonds in his own handwriting. This document was offered in evidence as the original agreement of partnership and the schedules referred to therein as being thereto attached, and is marked "Exhibit H. S. C. # 1."

The defendant notwithstanding the admissions of his answer, testifies that he never saw this list of cases until after this controversy commenced, that there was no schedule attached to his duplicate of the agreement, that no schedule of cases transferred by Edmonds to him was furnished to him at the time of signing the contract, and that he, Moyers, never did know what Edmonds claimed he turned over to him.

In the reference the defendant presents a list of claims in which he states that Edmonds was interested. This list is filed and marked Auditor's Exhibit B.

The complainant in his bill and the exhibit thereto, sets forth twenty-one cases which he asserts were included in the said schedule referred to in the agreement as being attached thereto, and in which allowances have been made and the fees collected by the defendant.

In this reference the complainant presents five additional cases which he asserts were included in the said schedule and agreement, and in which judgments were obtained and fees collected by the defendant.

Apart from the evidence relating to the identity of the schedule or list of cases referred to in the partnership agreement, the proof submitted in this reference relates mainly and directly to the cases specifically mentioned in the bill of complaint and the accom-
422 panying exhibit, and to the five additional claims or cases presented by the complainant. In the condition of the controversy over the identity of the schedule referred to in the agreement, and of the proof furnished as relevant to that issue, I shall not undertake to determine for the purpose of this reference, that controversy as a whole, and will limit my examination and findings to the specific cases which the complainant set forth in his bill or in the proceedings here as the subject of this accounting.

In all these cases jackets are produced here which were found among the effects of Edmonds after his death and containing powers of attorney to him, contracts with claimants and other papers relating to the specified claims. These documents, being identified, were submitted and received in evidence.

In the course of the proceedings here the defendant filed a statement of account which is marked "Exhibit D," in which he concedes the right of Edmonds to a share of the fees in three cases, that of Henry Fitzhugh, Nathaniel K. Thornton and Wm. R. Wellborn

and claims credit for costs and expenses alleged to have been incurred in the prosecution of these claims and a large number of others which had either been dismissed or were still pending in the Court of Claims.

Taking up the cases referred to in the bill of the complainant and specified in the schedule herewith, I find the facts to be as follows:

Claim of Henry L. Cate.

In this case the power of attorney of the claimant to George B. Edmonds, dated Feb. 20, 1886, is produced and established by the proof, as is also an agreement by the claimant with the said Edmonds dated Feb. 25, 1886, specifying the fee to be paid and received for the prosecution of the case contingent upon success. The
423 defendant Moyers appears as attorney of record in the Court of Claims and produces here a power of attorney from the claimant dated Jan. 27, 1888, about two years subsequent to the power of attorney to Edmonds and the agreement of the claimant with him as to the fee. This case was referred by Congress to the Court of Claim on the 4th of February, 1886, upon the petition which is filed in this case as Exhibit H. T. C. # 1 " and is shown to be in the handwriting of Edmonds. Upon the proof so submitted in the reference I find and report that this claim was one of the partnership cases.

Claim of J. C. Tappan, Administrator.

In this case the docket of the Court of Claims and that of the defendant, Moyers, both establish it as one of the partnership cases and it is now conceded by the defendant that such is the case.

Claim of Richard Butler.

In the course of the reference the defendant admitted this to be one of the partnership claims.

Claim of John B. Davidson.

The record of the Court of Claims shows the appearance of the plaintiff and defendant as attorneys in this case, and the evidence is conclusive that this was one of the partnership claims. At the time of the filing of the bill this claim was not appropriated for, but such appropriation has since been made.

Claim of Samuel Bagnall, Administrator of Brayboy.

An agreement between Page Brayboy, the original claimant and George B. Edmonds, dated February 4, 1886, is produced
424 and filed in this reference, its general character being established. The defendant appears on record in the Court of Claims as attorney on the fourteenth of March, 1890.

I find this claim also to be covered by the partnership agreement.

Claim of R. M. Johnson, Administrator of Samuel Heard.

The proof establishes the fact that Edmonds was connected with the case in the capacity of attorney in March, 1886, having at that time an agreement fixing the fee to be received by him contingent upon the success of the case. The defendant appears to have filed a petition in the claim in May, 1887.

I find that the proof establishes this as one of the cases included in or covered by the partnership agreement.

Claim of Annie Hunt.

The evidence shows that Edmonds was employed as attorney in this claim as early as May or June 1886, and had a fee agreement, which is produced here, dated June 1, 1886. The defendant's first appearance in the case is in October, 1888.

I find this claim to be also covered by the partnership agreement.

Claim of Hattie E. Ladd

The connection of Edmonds with this claim first appears in a power of attorney to him dated April 28, 1886. He also had a fee agreement of the same date as the power of attorney and both the defendant and Edmonds appear as attorneys upon the records of the Court of Claims.

This case undoubtedly, is covered by the partnership agreement.

425 *Claim of Jas. Harding, Administrator of J. H. Maury.*

The evidence proves the connection of Edmonds with this claim as early as April 1886, and an agreement with him for the fee is filed, dated April 20, 1886. The defendant appears in the Court of Claims in the cause, in 1890, and produces a fee agreement dated September 7, 1896. I find this case to be covered by the partnership agreement.

Claim of Wilson W. Williams, Administrator.

The connection of Edmonds with this claim is shown to be as early as October, 1886, with an agreement relating to the fee bearing date of the 16th of that month.

The evidence clearly establishes this as a partnership claim but the defendant asserts in testimony that he paid a portion of the fee to one H. K. Martin, a local attorney of Mississippi. The evidence in regard to this assertion is not definite or satisfactory. I have, however, reported the amount of the fee for which the defendant is accountable as set forth in the annexed schedule, as nearly as it could be ascertained in the condition of the proof.

Claim of N. K. Thornton.

This case is established as a partnership claim by the evidence submitted upon both sides.

Claim of Samuel Fitzhugh.

This case is also established as a partnership claim by all the evidence here.

Claim of J. R. Hornbaker.

426 It appears from the proof that Edmonds was connected with this claim as early as March, 1886, having a fee agreement bearing date the 10th of that month. The defendant, as attorney, filed a petition in the Court of Claims in this matter on the 12th of May, 1894.

I find this claim to be included in or covered by the partnership agreement.

Claim of Susan Merrill.

A fee agreement signed by Susan S. Merrill, dated April 20, 1886, also reciting that she has engaged George B. Edmonds as her attorney to prosecute this claim is filed here as an exhibit. Also a letter from Edmonds to the defendant dated July 10, 1891, referring to this claim and the judgment thereon and asking the defendant to purchase his, Edmonds' interest or his share of the fee to be received in the case. Upon this letter there appears an indorsement in the handwriting of the defendant stating in reply to Edmonds that he, Moyers, could do nothing "until payment is resumed by the Government." This endorsement is dated July 14, 1891. I find this case to be covered by the partnership agreement.

The following claims included in the bill of complaint and the schedule therewith, according to the evidence furnished in this reference, were claims prosecuted to judgment and the fees received by other attorneys, the defendant, Moyers, having no interest as attorney in the said cases and having received no part of the fees.

C. Ubele, administrator.
T. W. Russel.
M. C. Baylor.
427 J. L. Roberts.
George Show.

With reference to the claim of John Ehs also included in the bill of complaint and schedule, it appears in the proof here that the warrant issued by the Government for the amount of the judgment or finding of the Court of Claims was sent directly to the claimant and that the defendant did not collect or receive any fee therein.

In the schedule herewith I have stated the fees received by the defendant in the several cases herein enumerated, and also an allowance from such fees of the costs incurred by Moyers in the taking of depositions and filing of briefs in the Court of Claims. In the statement of account filed by Moyers in this reference and marked "Exhibit D," he has set forth items of expense alleged to have been incurred by him in connection with the three cases of Fitzhugh, Thornton and Wellborn, cases in which the right of the complainant's intestate is conceded. He also sets forth in the same account other considerable items of expense alleged to have been incurred by him in the prosecution of cases not included in the sc-edule attached to the bill of complaint, these alleged expenses consisting of fees paid at various points for taking of testimony, payments to local attorneys or assistants, travelling expenses and hotel bills and office expenses, and it is contended that in this accounting he, Moyers, is entitled to allowance by way of credit for all of these expenses said to be incurred in cases which Moyers states he received from
428 Edmonds and in which there has been no recovery, the cases being either dismissed by the court or are still pending.

In this connection, it will be remembered that by the partnership agreement the defendant undertook to advance the expense incident to the prosecution of the partnership claims and that such expense should not exceed two and one half per cent. of the amount that might be allowed on the said claim. I think a fair interpretation of this agreement is that each claim should be settled between the partners promptly upon the receipt by Moyers of the attorney's fee and such settlement should include the expense advanced by Moyers under the terms and limitations of the partnership agreement. Holding these views, I have declined to make any allowance in this account for the expense said to have been incurred in the prosecution of cases other than those set forth in the account herewith.

There are, however, other objections suggested by counsel for complainant and which seem to be substantial. The defendant

conceded that the cases enumerated in the said account marked Schedule D, filed by him, were cases received from Edmonds and from the time of the making of the partnership agreement Moyers was bound to recognize these as partnership cases and to perform in connection with them, the ordinary and necessary duties of a partner having the common business in charge, in the way of keeping correct and complete records and accounts. No such records or accounts so kept are produced in this reference and no sufficient excuse made for their non-appearance. The testimony of Moyers is indefinite and unsatisfactory so far as it relates to these alleged expenditures and is not, in my judgment, sufficient to warrant
429 an allowance of any portion of these expenses in this accounting, even if I were of the opinion that any allowance would be proper under my interpretation of the contract provision.

One witness was produced by the defendant who testified that he had examined certain records and proceedings in a number of claims set forth in the said Exhibit "D," estimating the cost of the taking of depositions and the filing of briefs from such information as the court records afforded, and Moyers testified in a general way that he had paid the amounts charged by him. With reference to the cost of briefs, it is testified here that a rule of the Court of Claims allows a certain amount per page for the type-writing or printing of briefs. In connection with the testimony of the witness above referred to, as to the cost of briefs in this case, it may be noted that the proof here is still destitute of any sufficient showing that the cost of filing these briefs was paid for outside of the regular office work of the defendant.

At the close of the evidence in this reference the subject matter in controversy was argued by counsel and submitted. In my examination then, of the evidence taken before the examiner and in this reference, I discovered that no evidence had been offered by the defendant as to the expense incurred in each of the cases enumerated in the bill of complaint excepting the three which were admitted by the defendant in the Exhibit "D" and I then called upon the counsel for the defendant to take the opportunity which I granted, to supply this omission, if it could be done. Thereafter some testimony was offered of a witness who had also examined the records of the Court of Claims and who made a statement of the con-
430 tents of the depositions on file, as well as of the briefs filed, applying thereon the price fixed by the rule or practice of that court, and in the cases in which this testimony was furnished I allowed credit for these expenses.

The defendant claims allowance of the alleged cost of expense incurred by him in securing appropriations from Congress for the payment of claims. This contention is made in the three cases conceded in the Defendant's Exhibit "D" to be partnership claims and the items described as "percentage of expense in securing appropriations."

This claim of credit is of a character which I do not feel justified

in reporting as allowed. In addition to its objectionable character I do not find the proof sufficiently definite as to the amounts expended by the defendant for the purpose of securing the appropriation or as to the necessity for such payments.

Another claim of credit is under the head of "office expenses" which is also made in the three conceded cases contained in Exhibit "D."

I do not find the proof relating to this claim sufficiently definite or satisfactory to justify the allowance of credit.

The annexed Schedule A, shows the amount of fee received by Moyers in each of the cases, and in determining the amount so received, I have in cases where the evidence on that point is either conflicting or uncertain given the defendant the benefit of any doubt. Aggregating the sum of said fees, I have divided the
431 result by two, crediting the complainant with one-half, against which I have stated in detail the amount of moneys paid by the defendant to Edmonds, as testified to by the defendant from recollection and from entries contained in small books called "dairies" produced by the defendant in connection with his testimony and filed in the reference.

Schedule B contains an itemized statement of these payments by dates and amounts with such additional words as appear in the entries in the diaries referred to.

Allowing credit for these payments, Schedule A shows balance owing by the defendant to the complainant with interest from September 16, 1899, the date of filing of original bill.

JAS. G. PAYNE, *Auditor.*

Auditor's fees and testimony paid by plaintiff, 279.00.

JAS. G. PAYNE.

432 After the preparation of the foregoing report, counsel for the complainant, upon notice to the counsel for the defendan , filed here a communication from the Treasury Department enclosing a copy of the draft or warrant issued in the claim of John Ehs, and requested that the said claim be included in this report and account. The warrant, on its face is payable to the order of the administrator of John Ehs, deceased, and is for the sum of Six hundred and twenty-five dollars. The draft, or warrant, bears upon its face the following note: "P. O. address, Care Gilbert Moyers, att'y."

The communication of the department also included an extract from the record, entitled, "Receipts for Treasury warrants," the extract showing that such warrant was delivered on the 13th of July, 1899, and received by Gilbert Moyers by C. N. Wilson."

Upon the proof so furnished, I have added in Schedule A this claim, the allowance of the claim being $627.00, and the fee 50 per cent. of the amount, of which the complainant is entitled to one-half, upon the basis of my report.

JAS. G. PAYNE, *Auditor.*

433 SCHEDULE A.

Gilbert Moyers in account with Horace S. Cummings, administrator of George B. Edmonds.

DR.

To fees collected in partnership claims as follows:

Henry T. Cate:

Amount of fee	$417.50	
Less cost of deposition and briefs	14.60	
		$402.90

J. C. Tappan, administrator:

Amount of fee	1,052.50	
Less for depositions and briefs	12.00	
		1,040 50

Richard Butler:

Amount of fee		61.00

John P. Davidson:

Amount of fee	457.50	
Less depositions and briefs	35.28	
		422.22

W. R. Wellborn:

Amount of fee	100.00	
Less for briefs, etc	10.00	
		90.00

Schedule A Continued.

434 Jasper Gall:

Amount of fee	$352.00	
Less for depositions and briefs	14.65	
		337.35

Samuel Bagnell, administrator of Braboy:

Amount of fee	348.25	
Less for briefs	11.75	
		336.50

R. M. Johnson, administrator:

Amount of fee		1,052.50

Annie Hunt, administratrix:

Amount of fee	9,722.50	
Less for depositions and briefs	59.80	
		9,662.70

Hattie E. Ladd:

Amount of fee	492.50	
Less for depositions and briefs	19.95	
		472.55

Jas. Harding, administrator:

Amount of fee	970.00	
Less for depositions and briefs	36.75	
		933.25

435 *Schedule A Continued.*

W. B. Williams, administrator:

Amount of fee	$113.50	
Less for depositions and briefs	27.20	
		$86.30

N. K. Thornton:

Amount of fee	335.00	
Less for depositions and briefs	16.10	
		318.90

Samuel Fitzhugh, administrator:

Amount of fee		9,987.50	
Depositions and briefs	179 40		
Paid W. A. Little	1,997.50		
		2,176.90	
			7,810.60

J. A. Hornbaker:

Amount of fee	165.00

J. A. Burgwyn, administrator:

Amount of fee	78.75

William F. Fauber:

Amount of fee	150.00

Susan Merrill:

Amount of fee	407.50

436 *Schedule A Continued.*

Total net fees	$23,828.57
To the complainant, one half	11,914.29

CR.

By payments to George B. Edmonds, as per Schedule B.		1,470.00
		$10,444.29

Claim of John Ehs:

Amount of fee received by the defendant.....	313.50	
Share of George B. Edmonds.....		156.75
Amount due the complainant on this accounting..		$10,601.04

JAS. G. PAYNE, *Auditor.*

437 SCHEDULE B.

Itemized Statement of Payments by the Defendant to the Complainant's Intestate.

January	2, 1889	.....	$10.00
February	8, "	.....	5.00
"	24, "	.....	15.00
March	29, "	.....	10.00
April	11, "	.....	10.00
"	16. "	.....	5.00
May	8, "	.....	15.00
June	5, "	.....	25.00
"	23, "	.....	10.00
September	23, "	.....	5.00
November	4, "	.....	10.00
"	20, "	.....	20.00
January	10, 1890	.....	20.00
March	15, "	.....	10.00
"	21, "	.....	15.00
November	6, "	.....	40.00
June	2, 1891.	Loaned.....	25.00
"	8, "	Advanced.....	50.00
August	25, "	.....	25.00
November	28, "	Loaned.....	10.00
December	5, "	.....	20.00
"	8, "	Loaned.....	15.00
"	10, "	Loan check.....	30.00
"	24, "	Loaned.....	25.00
January	17, 1892.	Loaned check.....	50.00
"	20, "	" "	25.00
February	9, "	.....	30.00

438 *Schedule B Continued.*

March	14, 1892.	Loaned		$10.00
April	8, "	"	check	100.00
"	27, "	"		30.00
May	7, "		"	50.00
"	19, "	"		50.00
June	11, "	"		20.00
"	18, "	"		25.00
"	21, "	Paid		25.00
"	29, "	Loaned		40.00
July	11, "	"		10.00
"	23, "	"		15.00
August	1, "			500.00

Added to account.

December	19, 1891	50.00
July	30, 1892	15.00
		$1,470.00

JAS. G. PAYNE, *Auditor.*

439 *Defendant's Exceptions to Auditor's Report.*

Filed September 19, 1902.

In the Supreme Court of the District of Columbia.

HORACE S. CUMMINGS, Administrator, Complainant,
vs.
GILBERT MOYERS, Defendant.
} No. 20802. Equity.

Comes now the defendant, by his counsel, and excepts to the report of the auditor filed herein August 20, 1902, because he says the auditor erred:

1. In not determining if the schedule of cases presented by the complainant and attached to one of the duplicate originals of the partnership agreement was or was not the schedule referred to in such partnership agreement.

2. In not holding that such schedule is a false schedule, and not admissible against the defendant.

3. In not failing to d-termine what were all the cases involved in the special partnership, and in limiting his report and audit to the twenty-one cases mentioned in the bill of complaint and five additional cases presented by the complainant.

4. In declining to make an allowance to the defendant for ex-

penses incurred by him in the prosecution of partnership cases other than those set forth in the account attached to said report.

5. In refusing to credit to the defendant for expenses in-
440 curred by him in payment of fees of counsel employed to secure appropriations by Congress for the payment of claims in which the special partnership was interested.

6. In refusing the defendant credit in said account for the item of office expenses.

7. In holding that the claim of Henry L. Cate was a partnership case and that the complainant is entitled to part of the fee therein.

8. In holding in like manner as to each of the following claims, to-wit.

John B. Davidson,
Samuel Bagnell, administrator of Braboy,
R. M. Johnson, administrator of Samuel Heard,
Annie Hunt,
Hattie E. Ladd,
James Harding, administrator of J. H. Maury,
Wilson W. Williams, administrator,
Samuel Fitzhugh,
J. R. Hornbaker,
Susan Merrill,
John Ehs,
J. A. Burgwyn, administrator, and
William F. Fauber.

A. A. BIRNEY,
Counsel for Defendant.

441 *Complainant's Exceptions to Auditor's Report.*

Filed September 20, 1902.

In the Supreme Court of the District of Columbia, Holding an Equity Court for said District.

HORACE S. CUMMINGS, Administrator of the Estate of George B. Edmonds, Deceased, Complainant,
vs.
GILBERT MOYERS, Defendant.
} In Equity. No. 20802.

Exceptions taken by the complainant to the report of the auditor of the court filed on the 20th day of August, 1902, said report having been made in pursuance of the decree made on the hearing of said cause on the 12th day of June, 1900.

1st exception. For that the said auditor hath in and by the said report and the Schedule A thereto annexed allowed to the said defendant by way of discharge various sums of money amounting together to

$437.48, by way of alleged expenditures made by said defendant for depositions and briefs filed in the Court of Claims in the cases set out in said schedule; whereas the complainant submits that the said defendant is not entitled to and ought not to have been allowed such last mentioned credits for the following (among other) reasons:

(*a.*) Because the sums credited for briefs were not shown to have been actually expended by the defendant:

(*b.*) That it was not shown that said sums represented the actual cost of having said briefs typewritten.

442 (*c.*) That it was not shown that the expense of typewriting said briefs was not borne by the claimants;

(*d.*) That it was not shown that the defendant actually paid the commissioner's fees in the Court of Claims for taking the depositions in said cases;

(*e.*) That it was not shown that the claimants themselves did not bear the expense of taking the said depositions, or that said several sums credited for depositions were not deducted by the defendant from the sums appropriated by Congress to pay the several judgments rendered in said cases; and

(*f.*) That the defendant, as managing partner of the partnership firm of Moyers & Edmonds, prior to the death of said Edmonds, and as the surviving partner after the death of said Edmonds, having failed to keep books of account, or any accounts of his expenditures as such, is not entitled to credit for such expenditures in the absence of satisfactory evidence of such expenditures, and that said evidence has not been offered by him in the premises.

2nd exception. For that the said auditor hath in and by his said report and said Schedule A annexed thereto charged the defendant with the receipt of an attorney's fee of only $457.50, in the claim of John P. Davidson, whereas the evidence shows that he actually collected, or should have collected a fee of $915.00 for the prosecution of said claim.

3rd exception. For that the said auditor hath in and by his said report and said Schedule A annexed thereto charged the defendant with the receipt of an attorney's fee of only $100, in the claim

443 of W. R. Wellburn, whereas the evidence shows that he actually collected, or should have collected a fee of $125 for the prosecution of said claim.

4th exception. For that the said auditor hath in and by his said report and said Schedule A annexed thereto charged the defendant with the receipt of an attorney's fee of only $348.25, in the claim of Samuel Bagnell, whereas the evidence shows that he actually collected, or should have *re*collected a fee of $497.50 for the prosecution of said claim.

5th exception. For that the said auditor hath in and by his said report and said Schedule A annexed thereto charged the defendant with the receipt of an attorney's fee of only $970, in the claim of James Harding, administrator, whereas the evidence shows that he

actually collected, or should have collected a fee of $975 for the prosecution of said claim.

6th exception. For that the said auditor hath in and by his said report and said Schedule A annexed thereto charged the defendant with the receipt of an attorney's fee of only $78.75, in the claim of J. A. Burgwyn, administrator, whereas the evidence shows that he actually collected, or should have collected a fee of $157.50 for the prosecution of said claim.

7th exception. For that the said auditor hath in and by his said report and said Schedule A annexed thereto charged the defendant with the receipt of an attorney's fee of only $150, in the claim of William P. Fauber, whereas the evidence shows that he actually collected, or should have collected a fee of $187.50 for the prosecution of said claim.

444 8th exception. For that the said auditor hath in and by his said general report and the Schedules A and B annexed thereto allowed to the said defendant by way of discharge various other sums of money amounting together to $1470, by way of alleged payments to George B. Edmonds, deceased, during the latter's lifetime; whereas the complainant submits that the said defendant is not entitled to and ought not to have been allowed said last mentioned credits for the following (among other) reasons: (*a*) Because the only evidence in support of the alleged payments, loans and advances set forth in said Schedule B were alleged entries in certain diaries produced by the defendant, which said diaries should not have been admitted in evidence, first, because they were not such books of account or books of original entry as would be competent or admissible evidence to show payments by the witness to the decedent; second, because the identification of the entries by the witness involved his testifying to transactions with the decedent in contravention of sec. — of the Revised Statutes of the United States; and thirdly, because there was nothing in the entries themselves showing that the sums mentioned therein were advances upon the partnership account; (*b*) because, even if otherwise admissible, the entries in said diaries of date May 8, 1889, of $15; of November 20, 1899 of $20 and of August 25, 1891, of $25 shows that such payments, if made at all, were made to one T. J. Healy and not to the decedent, and there is no evidence to show that *that* the said T. J. Healy was authorized by said decedent to receive said payments in his behalf, or that decedent ever actually received the same; (*c*) because the entries in said diaries of date June 2, 1891, $25; November 28, 1891,

445 $10; December 8, 1891, $15; December 10, 1891, $30; December 24, 1891, $25; January 17, 1892, $50; January 20, 1892, $25; March 14, 1892, $10; April 8, 1892, $100; April 27, 1892, $30; May 19, 1892, $50; June 11, 1892, $20; June 18, 1892, $25; June 29, 1892 $40; July 11, 1892, $10; July 23, 1892, $15, if admissible at all in evidence, show that said several sums were personal loans to said decedent by the defendant and not payments to him by the defendant on the partnership account, and the defend-

ant should not be allowed credit therefor in this partnership accounting.

DAVIS & TUCKER,
Sol'r for Complainant.

Motion to Open Report of Auditor.

Filed December 11, 1902.

In the Supreme Court of the District of Columbia.

HORACE S. CUMMINGS, Administrator, etc., *vs.* GILBERT MOYERS. } Equity. No. 20802.

Comes now the defendant, by his counsel, and referring to a report made to the court on August 20, 1902, by the auditor of the court relating to certain cases found by the auditor to have been embraced in a partnership between complainant's decedent, Geo. B. Edmonds, and defendant, and stating an account between said Geo. B. Edmonds and defendant regarding these cases shows to the court that in all of said cases a very large part of the labor
446 performed and the results accomplished were done after said Geo. B. Edmonds ceased to have any interest in the same, and chiefly after his death and the dissolution of the partnership between him and the defendant, and that such subsequent labor was done and the results achieved by defendant alone, with such assistance as he found necessary to employ and for which he himself paid; but that in the investigation and report of the auditor no consideration is given to these facts. Defendant therefore moves the court to open the said report and account of the auditor and refer the same to him again with directions to ascertain the amounts of the compensation due to defendant, out of the fees collected in said cases, for the said labors and expenditures and to restate said account, giving defendant credit for such sums; his findings regarding the amounts of such compensation to be made from the evidence now on file in the case and such additional evidence as may be offered on this point.

BENJ. CARTER,
Solicitor for Defendant.

447 *Cross-bill.*

Filed December 19, 1902.

In the Supreme Court of the District of Columbia.

HORACE S. CUMMINGS, Administrator, etc., *vs.* GILBERT MOYERS. } Equity. No. 20802.

The defendant, Gilbert Moyers, respectfully shows to the court the following stated facts:

1. After the formation of the special partnership between claimant's decedent, George B. Edmonds, and defendant, in which the matters complained of in this case originated, and while defendant was prosecuting the cases embraced in the same, he gave into the hands of George B. Edmonds numerous sums of money, aggregating $1470.00, which sums are specifically set forth in an exhibit filed by defendant before the auditor of the court during the prosecution of the reference made by the court to him for the statement of an account between defendant and said decedent regarding the affairs of said partnership and they are reported by the auditor to the court in Schedule B, of his report to the court, which contains his statement of the account. Certain of these sums, aggregating $560.00 although allowed by the auditor to defendant as credits, were considered and reported to the court by him as loans made by defendant to said George B. Edmonds, and not as payments made from the proceeds of or in any special reference to the business of said partnership.

2. In the prosecution of the cases embraced in said part-
448 nership defendant has necessarily incurred large expenses, and paid large sums for the taking of testimony, for fees to associate counsel, for the preparation of briefs and for other things which must be done in these Congressional cases, some of such expenditures having been made in the cases covered by the bill of complaint and said reference to the auditor and others being made in cases not covered by the bill or embraced in the reference to and report by the auditor; said expenses being stated in detail in exhibits filed by defendant before the auditor during the reference. The auditor in his report has given defendant credit for expenses of those cases alone which are named in the bill and embraced in said reference to him, allowing him nothing in reference to the other cases included in said exhibits.

3. Defendant refers to all of his exhibits filed before the auditor on said reference and asks that they may be read and treated as part hereof.

Defendant refers to — adopts as part of this bill (1) his answer to the bill of complaint, (2) his amendment to said answer, filed on May

23, 1900, (3) his supplemental answer to said bill, filed on May 26, 1900, and (4) his answer, filed on January 15, 1901, to rule to show cause why he should not be adjudged in contempt of court; and he prays that the whole may then be treated as a cross bill and that the court shall take cognizance of the matters of account between him and said George B. Edmunds generally, including those not included in the said account stated by the auditor and those
449 not embraced in said partnership in so far as they are embraced in the allegations hereof and of the pleadings already on file in the cause—and in its decree will give him the benefit of all indebtedness that shall be proved to exist from said George B. Edmonds to him by reason of the facts herein stated, as well as the facts heretofore pleaded in the cause.

GILBERT MOYERS.

Subscribed and sworn to before me this 19th day of December, 1902.

FRANCIS L. NEUBECK.

Service of copy of above bill acknowledged this Dec. 19, 1902.

DAVIS & TUCKER.

450 *Report of the Auditor.*

Filed February 3, 1903.

In the Supreme Court of the District of Columbia.

HORACE S. CUMMONGS, Administrator of the Estate of George B. Edmonds, Deceased. No. 20802. Equity.

Statement of auditor.

During the progress of this reference, the defendant produced and submitted in evidence a large number of jackets containing papers and documents of various kinds purporting to relate to the claims or cases in controversy here. About the close of a hearing in the reference, some time during the summer of 1901, the complainant and his counsel, Mr. Tucker, were examining some of these office files on the large table in the main room of this office, and in my presence, and, I think, in the presence of the defendant and his counsel.

While examining the office files of the claim of Anna Hunt, Mr. Tucker handed me a paper which he had been examining, taken from among the office files of that case, with the request that I should place it in my safe, as its contents would show its importance as evidence. Before complying with his request I examined or read the paper, the writing of which is in substance correctly described in the testimony of Mr. Tucker. I then placed it in the envelope

and deposited it in my office safe. At a subsequent hearing the papers in the claim of Anna Hunt being needed, the said paper was by me taken from my safe and laid upon the table where the
451 counsel and parties were seated. After the close of that hearing I looked for the said paper for the purpose of again placing it in my safe, and found that it, together with other papers, were missing. As the defendant on several occasions took documents which are in evidence from this office, I called upon him to return the paper in question and repeated that call to him personally or to his counsel a number of times. Finally, at a hearing in December 1901, after the taking of some testimony tending to show the original production of this paper, its disposition in this office and its withdrawal from the office, the defendant brought and produced fragments of the said paper pasted together, the said document being marked Exhibit G. M. December 17/01, and testified on page 159 of the auditor's record as to his taking the paper from this office and the manner in which it was torn, etc. Such portions of the paper as were then produced and filed I recognize as in substance containing partially the phraseology which I remember as contained in the paper when originally produced.

JAS. G. PAYNE, *Auditor.*

452 In the Supreme Court of the District of Columbia.

HORACE S. CUMMINGS, Administrator of the Estate of George B. Edmonds, Deceased,
vs.
GILBERT MOYERS.
} Equity. No. 20802.

Testimony on Behalf of Complainant on Reference to Auditor.

Hearing, pursuant to notice, held on the 27th of June, 1900 at 10 o'clock a. m., Mr. Tucker representing the complainant and Mr. Birney and Mr. Edwards representing the defendant, whereupon at the request of counsel for the defendant to allow further time for preparation an adjournment was taken to meet on Wednesday, July 11th, 1900 at 11 o'clock.

WEDNESDAY, *July 11th*, 1900—11 o'clock a. m.

Hearing, pursuant to adjournment last noted, both sides being represented by same counsel noted above; whereupon at request of counsel for defendant for further time to prepare the case, an adjournment was taken to meet on Saturday July 14th, 1900, at 10 o'clock a. m.

SATURDAY, *July 14th*, 1900—10 o'clock a. m.

453 Hearing, pursuant to adjournment last noted. Same counsel present. Whereupon after request and statement of coun-

sel for the defendant the hearing was further adjourned to meet on Thursday, August 2nd at 10 o'clock by agreement.

THURSDAY, *August 2nd*, 1900—10 o'clock a. m.

Hearing, pursuant to adjournment last noted.

Present: Same counsel representing the parties, respectively and also Mr. Butterfield appearing for defendant. Whereupon a further adjournment was taken by agreement to meet on Monday, August 6th, 1900 at 10 o'clock a. m.

MONDAY, *August 6th*, 1900—10 o'clock a. m.

Hearing, pursuant to adjournment.

Present: Mr. Tucker on behalf of plaintiff and Mr. Birney and Mr. Edwards on behalf of defendant, whereupon an adjournment was taken at the request of the defendant to meet on Wednesday, August 8th, 1900 at 10 o'clock a. m.

WEDNESDAY, *August 8th*, 1900—10 o'clock a. m.

Hearing pursuant to adjournment last noted.

Present: Same counsel as last noted; whereupon Gilbert Moyers the defendant herein, appeared as a witness in his own behalf and who having been first duly sworn, testified as follows:

Direct examination.

By Mr. BIRNEY:

454 Q. Since your testimony before the examiner have you, at the instance of counsel, prepared a list of all cases in which you were concerned with George B. Edmonds, under the agreement between you? A. I have.

Q. Look at the paper now shown you and state if that is the list and what *is* shows (handing paper to witness). A. This is the list I now hold in my hand which I have prepared, showing the Edmonds cases as appears from my docket and from other evidences with the papers on file in the Court of Claims. It also shows the cases allowed and the cases dismissed and the cases pending.

Q. That is, it shows, as I understand you, the present status, whether allowed, pending or dismissed, of all the cases in the list? A. It does.

Q. In the first column there are numbers. To what do they refer? A. Those are the numbers in the Court of Claims. They are styled, "Congressional cases." For instance, the first number is 1185 Congressional, and so on down the list.

Q. And those numbers correspond with the numbers in the Court of Claims dockets? A. They do.

Q. Do you know how many cases there are upon that list? A. They make 225. (Witness counting cases.)

Q. Of the 225 cases in the list how many were allowed?

Mr. TUCKER: I must object to that question because it
455 does not seem to me that that list, made up, as the witness has stated, from his books, can be the best evidence of what cases were allowed and what cases were disallowed, and what was done with the cases in that list; and upon the further ground that the scope of this inquiry is as to what was done in reference to the twenty odd cases mentioned in the bill of complaint in this case in which it is alleged that fees were collected by Colonel Moyers, which fees were distributable to himself and to the estate of the intestate of the complainant in this case. The preparation of the list might, of course, subserve the purpose of convenience but I am not willing that Colonel Moyers should testify that a list that he has made up from books and records we have never seen should be evidence as to what was done in the several cases which purport to be named in that list. I don't think it is competent testimony and I don't think it is within the scope of this reference.

The AUDITOR: Well, it is in fact a general partnership accounting.

Mr. TUCKER: The order of reference is not intended to cover that.

The AUDITOR: Perhaps you might leave that for the present; but it seems to me that the substantial objection, as to Colonel Moyers testifying what was done with these cases and which of them were allowed, is that there is better evidence.

(After argument:)

456 Mr. TUCKER: I offer in evidence as a statement of the account of the complainant the Exhibit No. 1 attached to the bill of complaint in this case.

The AUDITOR: It is, of course, very evident that somewhere in these proceedings it will be necessary to determine what cases were included in this partnership, and while I am not very particular whether it is done at the outset or done somewhere during the progress of the evidence, it will have to be done some time. Then, I must say that I understood from the first hearing we had here that the defendant was to file a statement in the form of an account of his receipts and disbursements. I am willing to go on with this testimony but it would be a saving of time and labor to wait. I will allow you to go on as you have begun *the* subject to Mr. Tucker's objection.

Mr. TUCKER: I reserve an exception.

Q. Of the 225 cases how many were allowed, how many were dismissed and how many are now pending undisposed of?

Mr. TUCKER: It is understood that the objection above made shall apply to all questions relating to the alleged list or schedule concerning which the witness is testifying.

The AUDITOR: I will allow this testimony to be given subject to a motion hereafter to strike it out.

Mr. TUCKER: Exception is reserved to the action of the auditor in this respect.

457 A. Five cases were allowed by the court, one on the merits was dismissed, no amount being found, and seventy-four were dismissed outright, all on alleged disloyalty, except possibly a few in bar, the court having no jurisdiction, loyalty being a jurisdictional question. When the question of loyalty came up the cases were dismissed.

The AUDITOR: Colonel Moyers, just tell us the results, you need not tell us the reason.

The WITNESS (continuing): The balance of the 225 cases are still pending in court.

Q. Will you give us the names and numbers of the cases allowed? A. Henry Fitzhugh, No. 1201, Congressional; John W. Fletcher, No. 4461, Congressional; Thomas Ryan, No. 4111, Congressional Nathaniel K. Thornton, No. 6902, Congressional, and William R. Wellborn, No. 4190, Congressional. In the case of William E. Carhart, No. 6823, the courts found the facts but failed to find any amount.

Q. In what number or proportion of those cases was testimony taken on behalf of the claimants? A. Testimony was taken in the seventy-four cases dismissed, and in the cases in which there were findings, six in number, making eighty in all. Then testimony has been taken in a number of those that are still pending. I am not able to give the exact number but I could do so before my examination closes.

Q. Can you produce here a statement of the expenses incurred in the prosecution of the whole number of cases and of the prosecution of the cases which were either dismissed or are yet pending?

458 A. I can and will as soon as the preparation of the same is completed.

Q. Am I right in stating that the course of the Court of Claims in these cases is to require first testimony as to the loyalty of the claimant? A. It is uniformly so in Bowman Act cases; and these are all Bowman Act cases.

Q. Will you also produce a statement of the amounts received by you in the whole number of cases which you enumerate? A I will.

Q. A schedule has been offered in evidence on behalf of the complainant as found attached to the duplicate agreement of the partnership left in possession of the receiver. Have you examined that schedule since your last testimony for the purpose of ascertaining how many, and which, of those cases were represented in the Court of Claims by other attorneys than Moyers and Edmonds, and by what attorneys.

Mr. TUCKER: I object to this testimony on the ground that I don't think the ruling of the auditor before covers testimony called

for by the question. It clearly calls for hearsay testimony, the best evidence being the record of the Court of Claims.

The AUDITOR: I think the defendant is a competent witness to prove that he or the partnership were not attorneys in those cases. I don't think that a man is compelled to go to the record to
459 prove that negative fact. The question is objectionable in its present form, but I think it would be proper for the witness to say that they hadn't anything to do with those cases. I should hold a man is competent to testify from his own knowledge that he hadn't anything to do with a certain case or was not at a certain place at a certain time or any similar fact.

Q. I now show you a schedule of the cases, forty-seven in number, taken from the schedule attached to the duplicate offered in evidence on behalf of the complainant as attached to such duplicate, and I will ask you if the firm of Moyers and Edmonds was in any way concerned in the prosecution of those cases; and, if not, what attorneys did prosecute them?

Mr. TUCKER: I object to the latter part of the question.

The AUDITOR: The end of that question makes it incompetent.

Mr. BIRNEY: I will strike out the addenda.

Mr. TUCKER: I object to this question because it states a matter of fact *that* which has not been proved, and I call the auditor's attention to the fact that Mr. Birney has stated to the auditor that the list handed was taken from a copy of the list.

Mr. BIRNEY: The record before the auditor can determine that.

Mr. AUDITOR: I will allow the question to be answered just as it is for the reason that if that paper now shown to the witness contains any cases not on the schedule referred to, that, so far as
460 that case is concerned, the paper goes for nothing. It will only be material so far as it includes cases referred to in the question.

Mr. TUCKER: I note an exception.

A. It did not apply to any of them.

Q. How many of the cases in this last list were not represented by you in any way (referring still to paper giving list of cases in which Moyers and Edmonds had no interest)? A. The following cases I recognize, and there may be others, which were represented by other attorneys: Nelly, Congressional, 500; Hough, 703; Covington, 2391; Dan Coleman, 3144; Blanton, 3307; Harris, 3717; Baylor, 3894; Show, 3898; Sol. A. Miller, 4295; Poll, 4327; Goodloe, 1163 and 4452; Sheftall, 4463; Russell, 4476; Fields, 4506; Sheftall, 4507; Parker, 4508; John L. Roberts, 4711; J. J. S. Martin, 4794; Silas Boxley, 4923; Joseph Smith, 5806; James M. Thompson, 5998; Joseph B. Mann, 6015; J. A. Parker, 6589; Martha Price, 6690; Daniel Brown, 6760; M. E. Jones, 6825; Thomas Dye, 7421; E. A. Dunn, 7590; Thomas B. Paine, 7768; J. H. Hugelsby, 8170; John

H. Williams, 9518; I think all the others on the list I prosecuted in connection with other attorneys.

Q. What do you mean by saying you prosecuted them with other attorneys? A. I mean I received them from other attorneys, or they were associated with me in the prosecution, in which cases Edmonds had no interest, or the special partnership of Edmonds and myself.

461 Mr. BIRNEY: I offer in evidence the paper about which the witness has just been testifying, headed "Cases in Edmonds' schedule, which belong to other attorneys or were received by Moyers from them," to be marked Exhibit "A;" also the paper previously produced by the witness entitled, "List of Edmonds' cases," as Exhibit "B."

Mr. TUCKER: I object to both papers on the grounds heretofore stated, and to the first paper offered in evidence upon the further ground that it contains the names of attorneys other than Moyers and Edmonds, and thus attempts to accomplish indirectly what has been heretofore ruled out by the auditor, namely that the evidence of the other attorneys connected with those cases is not admissible.

The AUDITOR: These papers will be filed entirely in connection with the testimony of the witness and as enlightening his testimony as to the names of claimants and amounts but not as evidence in themselves of any fact which they purport to show.

Q. In the schedule produced by the complainant as attached to the duplicate agreement found among the effects of the decedent, are the fifteen cases in the paper which I now hand you (handing paper). Please state what you know about any such cases, whether you ever prosecuted them or knew of the cases or whether such cases are, so far as you know, upon the dockets of the Court of Claims? A. The cases embraced in this list, fifteen in number, are not on my dockets, neither are they on the dockets of the Court of Claims. They are cases I know nothing about and never heard of them before.

462 Q. On this list on which the fifteen claims are stated are certain figures following the names. Will you state to the auditor what those figures indicate? A. Those figures evidently relate to the reports of the commissioners of claims. The commission was created by act of Congress of March 3rd, 1871. The figure 9 (after the first name) means the 9th report, the "R" following stands for the report. The "100" refers to the page in the schedule or list of reports as published by the commission; and the other "La." stands for the State, indicating Louisiana; "Ga." means Georgia, &c.

Q. And these figures refer to the reports of the commissioners of claims and the volume of the reports, the name of the State from which the claim was made before the commission and the page of the report? A. Yes, sir.

Q. Is that the printed list of Southern Claims Commission cases produced at the hearing before the examiner and referred to in your earlier testimony? A. It is the printed list of the volumes of the reports produced in the examination of Mr. Healy, a witness in this case.

Mr. BIRNEY: I now offer the paper just referred to by the witness, in evidence, to be marked Exhibit "C."

Mr. TUCKER: I object to the paper as irrelevant and incompetent and as not bearing upon the issues involved in this reference.

The AUDITOR: I will allow it to be filed in connection with the testimony of the witness.

Mr. TUCKER: An exception is reserved to the ruling of the auditor.

463 Mr. BIRNEY: Until we produce the account I think we have nothing further to offer from this witness. That account is not yet ready.

Cross-examination reserved.

Whereupon an adjournment was taken to meet on Wednesday, August 15th, 1900 at 10 o'clock a. m.

WEDNESDAY, *August 15th*, 1900—10 o'clock a. m.

Hearing pursuant to adjournment.

Present: Mr. Birney and Mr. Edwards for defendant and Mr. Tucker and Mr. Butterfield for complainant.

Mr. BIRNEY: Now, if the auditor please, I have this morning a summarized statement of receipts and expenditures by Colonel Moyers on account of this business, and I will say there is yet one item which has not been made as I directed it and as I desire it before the auditor. With that exception the account is as I wished to present it. As I understood the other day the auditor desired us to file this account and I will file it subject to correction of this one item. It will then be subject to any exception or objection by counsel on the other side.

The AUDITOR: As a starting point for proceeding here I think the account should be presented embodying practically the claims of the plaintiff or defendant as the case may be, subject to

464 objection by the other side and subject, of course, to additions and objections throughout the proceedings. It does not foreclose the parties from amending it in any way.

Mr. BIRNEY: I will state briefly how this was prepared, except in the one particular in which it is not correct. Colonel Moyers charges himself with the fees received in the cases in which there was success, namely the three cases of Fitzhugh, $7,952.63, Thornton, $335. and Welborn, $100., making a total of $8,387.63. As against that he charges certain expenses and the expenses in those three cases as distinguished from the others, charging two and a half per cent. on the amount recovered, which, as I understand,

doos not equal the amount of expenses; then the expenses in seventy-four dismissed cases and the expenses in the 151 pending cases, showing the net amount to be shared. Then he has charged the amount he paid Mr. Edmonds during the several years before his death, except one item of not very great amount which we will be prepared to state in a day or two. This statement I offer in evidence as Exhibit D.

The AUDITOR: This is filed subject to objections when counsel has an opportunity to examine it; and if you prefer you can go right on and take proof on either side.

Mr. TUCKER: I desire to reserve an exception generally to the whole statement on account of the manner of stating the ac-
465 count, not being justified in any way between the partners; and I reserve the right to object to any special item in the account hereafter.

The AUDITOR (to Mr. Birney): The general objection puts you on proof generally as to the account.

Mr. BIRNEY: I would suppose from what you already stated in the proceeding that the account should be more specific and definite before we go on and take further proof.

The AUDITOR: You say you made certain collections in three cases. That is your only statement, and it is for you to show that that is what you received. The matter of expense which you state in the account as presented, of course, is a proper subject of objection on the other side.

Whereupon the defendant, GILBERT MOYERS appeared for further examination

By Mr. BIRNEY:

Q. In the statement just filed you charge yourself with fees received in the cases of Fitzhugh, Thornton and Welborn. In your testimony you have stated that five cases were allowed, being the cases of Fitzhugh, Thornton, Welborn, Fletcher and Ryan. Will you please explain why the Fletcher and Ryan cases do not appear in your statement showing fees received? A. The Fletcher case has not yet been appropriated for. It is still before Congress. The Ryan case is not my case. I was mistaken there. That case was represented by Mr. Knutt. He was recognized in the Treasury Depart-
466 ment in the settlement as the attorney of record.

Q. Did he receive the fees so far as you know? A. So far as I know he did. I know I received nothing.

Q. Then, the three cases named in the summarized statement filed this morning are the only three cases in which you have received fees? A. Those are all.

Q. Now, please state the amount you received in each of those cases. A. I received in the case of Fitzhugh $7,952.63. The fee was one-half in that case. About $1,900 of the fee went to Mr. William L. Little an attorney at Fredericksburg, Virginia under a

contract between him and Mr. Edmonds prior to the transfer of the business to me. In the Thornton case I received $335. In the Welborn case I received $100. The balance of the fee in the Welborn case went to Foster and Butler, attorneys residing in Georgia. I just forget their address at this moment.

Q. Under what arrangement was it that part of the fee went to them? A. Under a contract with the claimant. They were to have one-fifth, I was to receive two-fifths and the claimant to receive two-fifths. It was a very peculiar contract, but that contract was the basis of settlement, and the case was settled upon its terms. They were the local attorneys.

467 Q. Are you prepared to state this morning what were the expenses in the five allowed cases or in the three allowed cases in which fees have been recovered? A. I am not prepared to state the actual expenses in those cases or even an approximate.

Q. Can you give that information in a day or two? A. I can.

Q. Now, are you able to state the expenses incurred by you in the prosecution of the seventy-four dismissed cases? A. I am.

Mr. TUCKER: I desire to be understood as objecting to that item of the account as claiming credit for items which, under the contract between George B. Edmonds and the defendant, is not justified.

(After argument:)

Mr. TUCKER: Those two items $2,544.86 and $2,266. are objectionable because they were not anticipated or provided for in the contract between the parties, nor does the character of the pending suit justify the inquiry by the auditor into the expenses that have been incurred by the defendant on account of those classes of cases.

The AUDITOR: I take it that the question of what cases are included in this partnership and in this proceeding are not distinctly settled.

Mr. TUCKER: No, and I think they ought to be settled first.

The AUDITOR: It seems to me that this account ought to be in different shape, Mr. Birney, if I understand the reading of these items. You take credit for expenses incurred in seventy-four dismissed cases, so much money in bulk, and so in 151 other cases.

468 That does not give the auditor or counsel any information as to what particular cases are included in the seventy-four or the 151 cases, or what the particular expenses were that make up the bulk sum.

Mr. BIRNEY: That we will reach in the course of the testimony. It has already been testified that there was seventy-four cases disallowed and that 151 cases are still pending, and it has been already testified that testimony was taken in those cases and expenses incurred, and it is our intention to supplement this mere summary by testimony showing the expenses incurred and their character.

The AUDITOR: As the account filed to-day stands it does not in-

dicate how many of those seventy-four cases form a part of this case or how many are not, and so with the 151 cases. It may be they can be identified by referring to some other proof in this proceeding.

(After argument:)

The AUDITOR: This is a general accounting within the limits of the partnership set up in the bill. The partnership was not confined to those three cases. It involved a great many others. So what I am getting at is, is there anything in this account to show that those seventy-four cases and those 151 cases were included in the partnership set up in the bill. I think the shortest was is to take the proof.

(After argument:)

Mr. TUCKER: I object to any such general statement of the account as that made here which simply states that so much
469 money was expended in certain cases without giving us any opportunity except on cross-examination to determine how the expenses were incurred.

Mr. BIRNEY: How far should we go in detail as to these items?

The AUDITOR: Far enough to show the character of these expenses. It is not enough to say that in seventy-four cases he spent so much money. There is material somewhere for an account showing how and when the money was spent and in what amounts. You could not put the objecting party to the trouble of getting it on cross-examination.

Mr. BIRNEY: I will now offer memoranda showing in detail the expenses incurred in the seventy-four cases mentioned, giving the name of the claimant, number of the case and amount expended in each case and file it in evidence as Exhibit "E."

Mr. TUCKER: If the auditor please, it seems to me that this question of whether or not Colonel Moyers should be allowed to claim credit for the expenses that he claims to have been put to in these pending cases and in the dismissed cases ought to be decided now.

The AUDITOR: I would like now to know what your theory is as to these expenses in the disallowed cases. That is going to be an important question here and perhaps the court ought to have all the facts in its possession. It might not agree with me in my determination of the case. Would it not be better that we should
470 have an acccunt in detail of the items of these expenditures?

Mr. BIRNEY: We have confined these to what we call the commissioner's fees. They refer to the taking of proof and the amount paid to the commissioners for fees.

The AUDITOR: Suppose Mr. Tucker wants to know to whom you paid those?

(After argument:)

The AUDITOR: You object to any allowance being made whatever in those seventy-four cases.

Mr. TUCKER: I do and also in the pending cases.

The AUDITOR: It will be necessary for the defendant to produce accounts showing the items and character of the expenditures for

which he claims credit, separately as to the allowed cases, the dismissed cases and the pending cases.

Whereupon an adjournment was taken to meet on Wednesday August 22nd, 1900, at 10 o'clock.

WEDNESDAY, *August 22nd*, 1900—10 o'clock a. m.

Met pursuant to adjournment last noted; whereupon on account of the absence of Mr. Tucker an adjournment was taken to meet on Thursday October 4th, 1900, at 10 o'clock, a. m.

471 THURSDAY, *October* 4, 1900—2 p. m.

Hearing pursuant to notice.
Present: Messrs. Birney and Tucker.

Mr. Birney presents an itemized account showing the amount of fees received by Gilbert Moyers on account of cases in which George B. Edmonds was interested with him; expenses incurred in three classes of cases,—first, the cases allowed, second, the cases dismissed by the court upon hearing, and third, the pending cases undisposed of; also items of monies paid to Mr. Edmonds by Mr. Moyers from time to time, and a sheet summarizing the whole. Mr. Birney also presents with this account, a list of the so-called Edmonds cases now pending in the Court of Claims, undetermined and in which no proof has been taken.

Mr. Tucker states that he desires time to examine the statement so presented and the hearing is adjourned to Saturday, October 6th, 1900, at 10 o'clock a. m.

SATURDAY, *October* 6, 1900—10 a. m.

Met pursuant to adjournment.
Present: Messrs. Tucker and Birney.

Mr. Birney announces that Mr. Moyer- is confined to his house on account of illness and asks that the hearing be adjourned to Tuesday, October 9th, 1900, at 11 o'clock a. m.

Hearing is adjourned to Tuesday, October 9, 1900 at 11 a. m.

TUESDAY, *October* 9, 1900—11 a. m.

Hearing pursuant to adjournment.

Mr. Birney notifies the auditor that Mr. Moyer- is still ill,
472 and states that he has notified Mr. Tucker of that fact.

Hearing is adjourned to Wednesday, October 10, 1900, at 2 p. m.

WEDNESDAY, *October 10th*, 1900—2 p. m.

Hearing pursuant to adjournment.
Present: Messrs. Birney, Tucker and Edwards.

Mr. Tucker on behalf of his clients, objects to each and every item of disbursement contained in the account heretofore filed by the defendant and for which he claims credit, and requires strict proof thereof. He also submits that the testimony heretofore taken in the cause requires the defendant to account for monies received in all of the partnership claims described in the bill of complaint.

THOMAS J. SHELTON having first been duly sworn testified as follows.

By Mr. BIRNEY:

Q. Please state your name? A. Thomas J. Shelton.
Q. What is your age? A. Sixty-one years.
Q. What is your place of residence? A. Grangeville, Tennessee.
Q. You now reside in Washington? A. No sir.
Q. What has been your connection with the Court of Claims. A. As commissioner of the court.

473 Q. For how many years? A. I was first a commissioner in the fall of 1886.

Q. As commissioner of the Court of Claims have you, from time to time, taken testimony in cases pending before it? A. Yes, sir, a great many cases.

Q. Always on behalf of the claimant or the Government? A. Sometimes for the Government and sometimes for the *defendant*.

Q. Does that continue over the whole period you have been commissioner? A. Yes sir, continuously.

Q. Have you, at the request of Col. Moyer-, examined the records of the Court of Claims for the purpose of preparing yourself to testify as to the amount paid commissioners for taking testimony in the cases named in the paper I now show you, being the accounts filed by Col. Moyers. A. I do not know about this paper, I did investigate a great many cases at his request.

Q. What course did you pursue in your examination? A. I went to the Court of Claims and called for the papers corresponding to the list.

Q. Did you receive them in all cases? A. Yes sir.

Q. Then what did you do with them? A. Examined them to ascertain what the commissioner's fees would amount to in each case.

Q. Did you also examine them to determine—— A. And also to ascertain the briefs that had been filed in the various cases.

474 Q. What was your purpose in examining the briefs? A. To ascertain the number of pages.

Q. Did you do that in each of these cases? A. Yes sir.

Q. Have you your memorandum showing amounts paid commissioners, the number of briefs and proofs? A. Yes sir.
Q. Please produce it?

Witness produces paper.

Q. Is the paper you now produce a true statement of the fees you find to have been paid the commissioners noted upon it and the number of pages of briefs on the records of the Court of Claims. A. This paper prepared by me from the original records in the Court of Claims shows the fees due the commissioners or notary public, taking proof in the several cases mentioned by number and name, and also the number of pages of briefs filed in the several cases as examined by me, and the pages counted set beside each name.

Mr. Birney offers the paper in evidence stating that it corresponds with the list filed by Col. Moyer.
Mr. Tucker objects to the competency of this paper as evidence.

Q. Did you make any other examination in the cases for any purpose? A. No sir, I think not.

475 Cross examination.

By Mr. TUCKER:

Q. Taking the first case mentioned on that paper, "Leonard #7451," please explain what is meant by the different items under the heading of that case. Read the item first and then explain each item? A. "Leonard #7451, testimony at Wash. D. C.," March 3d. 1894 $5.00. "May 29/94, testimony at Port Gibson, Miss. 11.50." "Aug. 29/94, 22 pages briefs on L."
Q. Explain what those different items mean? A. The first item of $5.00 were the fees allowed by the court to the commissioner taking the testimony in that case for claimant.
Q. What commissioner, where? A. It does not say. May 29, Port Gibson, $11.50, were the commissioner's fees taking proof for claimant in that case, No. 7451.
Q. How do you ascertain that amount of $5.00? A. I arrive at the 5.00 by counting the pages, allowing the commissioner the rates allowed by the court; also the name in Port Gibson, Mississippi.
Q. In the same case, 7451, the first case on this list, the item August 29. 1894. Were the twenty-two pages for briefs filed on loyalty, filed by Gilbert Moyers—now do I understand that in that case you simply counted the pages of the testimony and estimated from the ordinary rates allowed for testimony taken at Washington? A. Yes sir.
Q. What were the fees fixed by the court? A. The rules of the Court of Claims allow the commissioner or officer taking the
476 proof, in longhand .15 a folio of one-hundred words: where it is written by a stenographer and put in type, the court allows .20 per one hundred words.

Q. In this particular case was the testimony taken at Washington taken in long hand? A. Taken in typewriting.

Q. What did you allow in this case? A. .20.

Q. Why did you allow .20 in this case? A. I think I knew the party taking it was *not* a stenographer.

Q. And that rate is allowed by the Court of Claims? A. Yes sir.

Q. How about the Port Gibson, Mississippi case? A. I think the Port Gibson case was taken in long hand.

Q. How much did you allow in that? A. .15.

Q. You allow .15 when taken in longhand and .20 when written on the typewriter? A. Yes sir.

Q. Where did you get such charge? A. From the rules of the court.

Q. Can you produce a copy of those rules? A. Yes sir.

Q. Who were the commissioners in Washington and Port Gibson?

A. I cannot answer that question. I would state that the
477 original memorandums taken by me upon the investigation, contained the names of the commissioners or notaries, at what place taken, and upon inspection of the several depositions I could tell whether to rate them at .15 or .20. That is, where they were in longhand I allowed .15 a folio: when in typewriting .20.

Q. Why didn't you put down there the number of folios in each case. A. I originally did, the number of pages in each case.

Q. Now the item here, "22 pages briefs on L." means that the attorney for the claimants filed a brief of twenty-two typewritten pages on the loyalty of the claimant? A. Yes sir, at the time mentioned.

Q. Do I understand that the court allowed the fees of the commissioners to the claimant on his succeeding in the case? A. I do not catch the question.

Q. What I mean is whether the cost of taking those two depositions at Washington and Port Gibson were charged up to the claimant?

Mr. Birney objects.

Q. Was the cost of taking these depositions charged up as costs when the Government allowed the claim? A. The court never allowed the costs.

Q. Is there anything on these depositions, to show whether the fees were paid? A. I could not say about all of them, some were paid.

Q. How about this Leonard case? A. I don't recollect now.

478 Q. Does what you have said about the Leonard case apply to all the cases on this list? A. Yes sir.

Mr. Tucker agrees that the paper which has been produced by the witness shall be considered as containing statements which the witness would have made if orally interrogated as to each case named

therein, but objects to all of such statements on the ground of their irrelavency, immateriality and incompetency.

The hearing is adjourned to Friday, October 12, 1900, at two o'clock p. m.

FRIDAY, *October 12th*, 1900—2 p. m.

Hearing pursuant to adjournment.

Present: Messrs. Birney and Tucker.

Mr. Birney states that Col. Moyers is still confined to his house by illness and just as soon as he is able to appear the hearing will be resumed.

The hearing is then adjourned subject to notice.

MONDAY, *October 22d*, 1900—2 p. m.

Hearing pursuant to notice.

Present: Messrs. Tucker, Birney, Edwards and Col. Moyers.

THOMAS J. SHELTON having been recalled testified as follows,

By Mr. BIRNEY:

Q. Did you act as commissioner in any of the cases which
479 you named and which are in the list you produced? A. Yes sir.

Q. Give the numbers and amounts paid you, if anything, in each case? A. No. 3810 Congressional, McAlpine *vs.* United States.

Q. What was the amount paid you? A. $9.75. No. 3431 Congressional, E. B. Towne *vs.* United States, $16.05. No. 3412 Congressional, Thomas Shelby *vs.* United States, $8.00. No. 6826 Congressional, Gardner *vs.* United States, $3.00.

Q. Where was the proof in these cases taken? A. The depositions in the Gardner case were taken at Franklin, Louisiana, November 14th, 1889. The proof in the McAlpine case was taken at Port Gibson, Mississippi, November 20, 1889. In the Towne case depositions were taken at Vicksburg, Mississippi, November 21st, 1889 and December 14th, 1889.

By Mr. TUCKER:

Q. There were two sessions? A. Yes sir, $16.05. In the Shelby case proof was taken at Greenville, Mississippi, November 25th, 1889.

By Mr. BIRNEY:

Q. Who paid your fees? A. Col. Moyers.

Q. In all the cases? A. Yes sir.

Q. Who went with you to Greenville to take the testimony? A. I think Col. Moyers.

480 Q. Did you travel with Col. Moyers? A. Yes sir.

Q. Who paid the expenses? A. He paid my expenses and fees for taking testimony.

Q. Who paid the railroad fares and hotel bills? A. He did.

Q. Is that true in the other cases you have mentioned? A. Yes sir.

Q. Can you recall from what point you started? A. No sir, we were on a general trip to New Orleans.

Q. You made your start from Memphis? A. Yes sir.

Q. Was Col. Moyers' office at that place? A. Yes sir.

Q. Do you know what the railroad fare is from Memphis to Greenville or to the other places? A. No sir, I think three cents a mile is the regular charge.

Q. Do you know the number of miles? A. No sir.

Q. Has it been the custom in the taking of depositions in these cases, for commissioners to be employed who were resident of the places where the testimony was taken, or to have a commissioner to travel with the attorney and take the depositions from place to place? A. Well, my agreement with Col. Moyers was to take the trip along with him in 1889.

Q. Were you then a commissioner of the Court of Claims? A. Yes sir, he agreed to pay my expenses and the fees allowed by the rules of the court.

481 By Mr. TUCKER: I move to strike out all of the testimony of this witness given at this session with respect to the commissioner's fees paid to him in the four cases concerning which he testified, upon the ground that the defendant under the terms of his partnership agreement with Mr. Edmonds is not entitled to credit for such expenses, or for other expenses of the witness, the four cases referred to never having been appropriated for.

The objection is overruled for the present with leave to renew it at any stage of the reference.

Cross examination.

By Mr. TUCKER:

Q. You stated that in 1889 Col. Moyers' office was in Memphis, Tennessee? A. Yes sir.

Q. Did he have an office at Washington at that time? A. Yes sir.

Q. How much time did he spend in Memphis and how much time in Washington? A. I could not tell you. His family were in Memphis.

Q. His family were in Memphis and did he spend most of his time in Memphis? A. I think so.

GILBERT MOYERS having been recalled testifies as follows.

By Mr. BIRNEY:

482 Q. It has been testified by Mr. Shelton, that commissioners' fees appear to have been incurred in the cases involved in the list which you produced of cases pending, tried and dismissed in the Court of Claims, in which proof was taken and which you claim allowance for. State whether the commissioners' fees in these several cases have been paid, and if so by whom?

Mr. Tucker objects upon the ground that the defendant is not entitled to credit for disbursements made for expenses in any cases other than those appropriated for under the terms of his partnership agreement with the decedent, and it is desired that this objection be considered as made to all questions asked with respect to expenses incurred in that class of cases without repeating the objection.

The objection is overruled with leave to renew at any stage of the reference and the testimony is admitted subject to the objection which applies to all testimony sought to be introduced relating to this class of claims, the objection to be determined ultimately in this reference or at some convenient time.

A. These expenses were paid by me as incurred in the regular course of my limited partnership with Mr. Edmonds, pursuant to the contract agreements.

Q. Have you looked over the items of commissioners' fees for taking testimony in these various cases? A. I have carefully.

Q. What have you to say as to their correctness? A. They are correct, those fees were paid by me and the travelling expenses of the attorneys and commissioners as charged not only in those cases but in several others which I shall add.

483 Q. What course of practice did you pursue in the taking of depositions in these cases?

Mr. Tucker objects to the question as not calling for any facts as to what the witness did with respect to any particular case, the decedent or his estate not being bound in anywise by any practice of the witness but by his acts.

The objection is overruled for the present.

Mr. Tucker notes an exception.

A. I pursued that course of practice*d* required by contract obligation in each particular case, that I was to bear the expenses incident to the prosecution of those claims and where I could not act myself, I sent an attorney, paid him a per-diem, hotel bills and commissioners' fees.

Q. Who paid the expenses of the commissioners? A. I paid those whenever I took one with me. In many instances I employed commissioners in the locality where the testimony was taken especially in the cese of Mr. Jordan who was one of the attorneys in the cases.

Q. Look at this "Auditor's Exhibit No. 1," and state by whom

that was made up and what part you had in it. A. That was prepared by myself, under my special direction, after examining the record in each case, who was the attorney representing me, where the proof was taken, the number of days engaged and the necessary expenses incurred.

Q. You speak of records, what do you mean? A. I mean my own records in each case.

Q. Do those files show the name of the attorney who took
484 the depositions in each case? A. Yes, sir, they show all the essential facts.

Q. What items of expense appearing in that exhibit are shown by the Court of Claims records? A. Shall I take up each case separately?

Q. No, generally. A. The fees paid to the officer taking the depositions will appear by an examination of the records in the Court of Claims applying the fees as fixed by the rules of court, the briefs will show for themselves the number of pages and whether they are in typewriting or not, as the case may be, whether or not the affidavits show that it cost so much for each affidavit in the record of the Court of Claims, I am not prepared to state. The docket of the Court of Claims in each case will show the amount of work done on each case together with my own private docket in my office.

Q. You have stated that the records will show the amount paid the commissioners for taking testimony under the rules of the Court of Claims, what do you mean by that? A. It will show the legal charge allowed the commissioner for taking proof.

Q. How is that determined? A. By the number of days, or folios or pages taken in making proofs, that will show the amount I had to pay in securing these proofs.

Q. Can you state with this exhibit before you, whether it contains a true statement of account of fees paid for taking depositions as shown by those records?

485 (Hands witness statement filed in connection with the testimony of the witness Shelton and which is now marked "Exhibit Shelton" and admitted as the evidence of the said witness as to facts appearing in the files and records of the Court of Claims excluding all statements of rates of charge or allowance all computations and results in dollars and cents.)

Q. Can you tell who took the testimony and where it was taken in the case of James A. Mahan? A. Not without referring to my memorandum made by me.

Q. How much did you pay Mr. Jordan for his work for you in each case, how did you determine his fee? A. I paid Mr. Jordan by contract, seven dollars a day and his expenses, hotel and travelling. He first asked ten dollars but by correspondence I got him to reduce it to seven.

Q. You paid him seven dollars per day? A. Yes sir, with hotel and travelling expenses.

Q. Can you tell how much you paid him in the case of James A. Mahan? A. I cannot without seeing the number of days it took in taking proof. I think it was two days.

Q. What means have you of determining the expenses of hotels and railroad fares? A. By the usual rates of travel by rail, being at that time, I think, three cents a mile. The distance from Memphis to Corinth was two hundred and fifty miles and the hotel rates were two dollars a day.

486 Q. The testimony in that case appears to have been taken at Iuka, Mississippi. Is that further from Memphis than Corinth? A. Yes sir, twenty-five miles at least. I can get a time table which will show the exact distances.

Q. Who was H. K. Martin who appears to have taken testimony in the second case, that of A. R. Leonard? A. He was at that time a practicing attorney in Corinth, Mississippi, and I employed him in several instances.

Q. How much did you pay Mr. Martin per day? A. Ten dollars and expenses except in those cases in which he had an interest, which were not these cases.

Q. He had no interest in any of these Edmonds cases? A. No sir.

Q. Where did he live? A. At Waterville, Mississippi.

Q. When you were not represented by an attorney in these cases, who acted for you in the taking of depositions when you were not present. A. I generally gave them personal attention with those exceptions, in some instances I framed interrogatories and had the commissioners ask them.

Q. How are those cases distinguished from the other cases in which attorneys appear in this auditor's exhibit? A. Only in the records of the testimony, which will show if any attorneys appeared.

Q. You have charged in this account for typewriting briefs, please state what you paid for typewriting in these cases?

487 A. About the average price, twenty-five cents a page.

Q. Did you pay for the typewriting you had done in these cases? A. Yes sir, I paid for all the expenses.

Q. Have you any way of telling what amount you paid for railroad fares and hotel expenses of attorneys or persons who represented you? A. Only by general expense account and what was customary hotel charges and the regular railroad charges, knowing the distances travelled and the location of the hotel and what was about the usual prices charged at such localities.

Q. Then you kept no exact detailed account? A. It goes into a general expense account, as I had to pay all expenses in these accounts I kept no detailed account, and otherwise I would have made the fee contingent upon success, and I to pay all expenses.

Hearing is adjourned to Wednesday, October 24th. 1900 at two o'clock p. m.

WEDNESDAY, *October 24th*, 1900—3 p. m.

Hearing pursuant to adjournment.
Present: Messrs. Tucker, Birney, Edwards and Col. Moyer.

GILBERT MOYERS having been recalled testifies as follows,

By Mr. BIRNEY:

488 Q. Your attention was called the other day to the items of charge in "Auditor's Exhibit No. 1," of railroad fares in various cases pending, tried and dismissed, in which proof was taken. Are you now able to give in detail the distances travelled and the amount spent for these items? A. I am.

Q. Please do so? A. My reference to Appleton's Railroad Guide enables me to state the distances as follows——

Mr. Tucker objects to the witness referring to any g-ide or book to show the distances without showing that this is an official book or document showing such distances.

Mr. Birney desires it noted that the witness produces book and offers it in evidence.

By Mr. TUCKER:

Q. What is the book? A. The Travellers Guide published by Appleton.

Mr. Tucker objects to the competency of the book as produced no proof having been offered to show its official character or its competency as evidence.

By Mr. BIRNEY:

Q. Where did you procure that book? A. I instructed one of my clerks to go to the railroad office and purchase it.

Q. What knowledge have you of that publication being accepted as an official publication? A. I have no knowledge except that it seems to be referred to in all railroad offices when you enquire about distances, rates, &c. It is a regular publication issued by the Appletons monthly.

489 Q. Do you know whether it is in use by railroad agents at stations? A. I have seen similar books on the desks of railroad agents for use.

Mr. Tucker objects to the competency of the books. The best evidence of the distances referred to is an official book of distances issued by the Government of the United States.

Mr. Birney offers the book in evidence.

The objection is overruled and the book admitted.

Mr. Tucker notes an exception.

Q. Did you state the other day, the rate in railroad fares in that part of the country, Memphis and various places in Mississippi, mentioned in this case? A. I did.

Q. What was it at that time? A. Three cents a mile. I might add, possibly not quite that much for long distances.

Q. Have you any correction to make as to the distance from Memphis to Corinth? A. I find I am reported as stating two hundred and fifty miles. I intended to state about one hundred miles. I find the correct distance is ninety-three miles, to be found on page 179 of this railroad guide. There is another slight mistake in the distance from Iuka to Memphis, I was under the impression that Iuka was about twenty-five miles from Corinth, making it about one hundred and twenty-five miles, I find the actual distance is one hundred and eighteen miles as shown on page 179.

490 Q. Of the railroad guide? A. Yes sir.

Q. In the case of Z. C. Baker I find L. C. Batten named as the attorney who had charge of the case. Did he represent you and if so what contract had you with him?

Mr. Tucker objects unless the contract is not in writing.

Objection is sustained.

Q. Was that contract with Mr. Batten in writing or how? A. I cannot recall any contract in writing.

Q. Well, how much did you pay Mr. Batten for serving you? A. I cannot recollect the amount but I think he didn't charge in that case for attorney's fees, I think they charged for taking the testimony before a notary.

Q. In the case of Abraham Eichburg appears a charge of attorney's fees ten dollars, and that William H. Jones appeared for the complainant. What compensation did you give Mr. Jones for appearing? A. Mr. Jones' services were engaged by the commissioner who took the testimony and I paid the amount, ten dollars, for his services.

Q. In the case of Susan Thagard appears a charge of ten dollars for attorney's fees, in which Henry S. Cook seems to have appeared for the claimant. What arrangement did you have with Mr. Cook and with the claimant? A. That proof or testimony was taken in North Carolina and the book here records where the claim-

491 ant resided and the commissioner reported the price of this attorney and I paid his fees, ten dollars.

Q. In the case of Patrick Lynch the testimony appears to have been taken at Atlanta Georgia before J. H. Smith and that M. Lewis appeared as attorney. What amount did you pay him if he appeared for you? A. I paid him ten dollars, that is what all those local attorneys charged me where they did not have a contingent interest in the fee.

Q. In the case of Lucy A. Caldwell the testimony seems by the record, to have been taken at Little Rock and Sol Clark appeared for the claimant and if he appeared for you state what you paid him? A. He appeared for me and I paid him at different times for his services different sums as he would render an account.

Q. What was it all told? A. I think ten dollars which was his usual charge.

Q. In the same case depositions were taken at Plum Bayou, Arkansas, where White & Altheimer appeared for the claimant Did they appear also for you and if so, how much did you pay them? A. They appeared for me and I instructed them what to do, gave them the history of the case and paid them.

Q. How much? A. Ten dollars.

Q. In the same case testimony was taken at Fort Smith
492 by —— —— for the claimant, did you pay him and if so, how much? A. I do not recollect that name I will have to examine the data to make a more definite answer as to that.

Q. In the case of H. Woodward depositions appear to have been taken at Navasota Texas and Earle Preston appeared for the claimant, did you employ him and if so how much did you pay him? A. I find I did not bring that docket with me, I would like to defer an answer to that question until I can look at the docket.

Q. In the case of W. K. Abbott testimony appears to have been taken at Harrisonburg, Virginia, and H. J. Taylor appeared for the claimant, did you employ Mr. Taylor and if so, how much did you pay him? A. Mr. Taylor had an interest in that case I find and the attorney's fees should be omitted from the account. He had a general interest in the business in that locality. Is the name H. L. Taylor?

Q. No, H. J. Taylor. A. I think that is his name if I am correct about it he made no charge, he had an interest.

Q. In this exhibit you have made in each case a charge for office expenses. Will you please explain in detail how you arrive at the charge you name? A. In the case of James A. Mahan, to illustrate what I mean by office expenses, I wish to refer to my docket entries in that case, the first case on the list, the entry in this case on page 72 docket H now produced. This shows twenty-two entries.

493 Q. Extending over what period of time? A. From March 1890 to June 1894, besides these entries many letters were written which it wasn't necessary to enter upon the docket. Now I estimate from these entries——

Mr. Tucker objects.

Mr. Birney states that he wishes to offer these dockets in evidence.

Q. Are those original entries? A. They are certainly original entries.

Q. Are these the dockets kept in your office? (Pointing to books in the possession of the witness.) A. They are the regular dockets, the entries are nearly all, if not all, made by clerks in my office charged with that purpose, some of the entries may have been made by clerks now out of my employ.

Q. These books were kept in the regular order of business in your office? A. Yes sir.

Q. What do they purport to show? A. They purport to show the filing of different papers at different times in the Court of Claims, and the entries in the Court of Claims will corroborate every entry in this docket as to character of papers filed. They show the papers sent down to the claimant or his attorney to have executed. Now in this first case, here is the reference of this claim, March 1890, to the Court of Claims, eight papers or more. A part of the office expense is the expense incident to having that claim referred, that requires a clerk's attendance on committees and the ordinary
494 expenses of going to and from the Capitol, and the time expended in going, and his salary. The next charge is in March 1890, call made upon the Confederate records or archives, the next entry—. It involves all the expenses of clerical labor, &c.

Q. Have you other book entires in the other cases which are mentioned in this Exhibit No. 1?" A. In every case.

Q. Can you give the auditor a memorandum of the pages of your dockets? A. I can.

Q. Have you here now your dockets in which these entries appear? A. I have three of them.

Q. Is there another or more than one? A. I think his cases extend over some eight or nine of my dockets. I only brought these three as they referred to the first cases on the list.

Mr. Birney offers in evidence the several pages of the dockets on which appear the entries mentioned in "Exhibit No. 1."

Mr. Tucker objects to the admission of the entries in evidence on the ground that entries of the character described by the witness are wholly insufficient to entitle him to claim for a credit for so-called expenses, there being nothing in the entries to show any specified sum or sums of money expended by him for ex-
495 penses, and they do not supply any data by which an estimate of it can be properly made of the actual amount of money, or if expended by him for this purpose.

The auditor rules that for the present the evidence will be allowed to be received. Mr. Tucker notes an exception.

Q. During the time mentioned you had an office in Washington you have testified? A. Yes sir, I had an office in Washington.

Q. How many clerks did you employ? A. From four to six or seven, sometimes more.

Q. Can you state what were your office expenses, clerk hire, rent, stationery, and other incidental office expenses at any period?

Mr. Tucker objects to the question as wholly incompetent and irrelevant.

A. I cannot without reference to my books, expenses varied both as to my rental and number of clerks and their salaries at different times.

Q. Can you make up such a statement? A. I can substantially.

Q. Please do so. During the time that you were engaged in the

active prosecution of these cases mentioned in Auditor's Exhibit No. 1, can you tell what proportion of the time of your office force was spent upon these cases as compared with the whole number of cases you were prosecuting?

Mr. Tucker objects.

496 A. I should say a fair estimate would be one-fourth or one-fifth of the time and expenses, for the reason that I have disposed of on an average about eighty to one hundred and twenty cases a year and the number of these cases I believe aggregate nearly two hundred or three hundred and the principal work was done in 1889, 1890, 1891, 1892 and 1893 possibly extending into 1894. Some work has been done since.

Q. I will request you to make up a statement of your office expenses during the period of time you have named, and produce it at the next session.

Hearing is adjourned to Thursad-y, October 25th, 1900 at 11 a. m.

MONDAY, *October 29th*—2 o'clock p. m.

Hearing pursuant to adjournment from Saturday October 27th, 1900, at which time Mr. Birney was unable to be present owing to an engagement in court.

Present: Messrs. Edwards, Tucker and Shelton.

THOMAS J. SHELTON, having been recalled testified as follows:

By Mr. EDWARDS:

Q. You were asked before, to produce the rules of the Court of Claims. Have you done so? A. Yes sir, I have the rules of 1884 here.

497 Mr. Tucker after examination of the copy of the rules, offered, asks if it would not be well to have the witness point out the rule relating to that case.

By Mr. EDWARDS: Read the rule relating to fees?

A. Section 7, page 15, rules of the Court of Claims for 1884——

Mr. Tucker states that he has no objection to the introduction in evidence of these rules provided it be shown that no new rules affecting the fees of commissioners at the time of taking testimony in the cases referred to by the witness, have *not* been made.

Mr. Edwards states that hereafter he will put in the rules running up to 1895.

The WITNESS: Section 7 reads as follows.

"7. The fees shall be three dollars a day for attending to take the depositions, and twenty cents a folio of one hundred words for tak

ing and returning it; but this *per diem* allowance is limited to one day for a deposition or series of depositions taken in the same case. Short hand reporters, acting as special commissioners, will receive, in addition to these fees, ten cents a folio for writing out the deposition from their notes."

Q. I will ask you if you have examined the record of the Court of Claims in the cases of Fitzhugh, Thornton and Welborn in regard to the expenses for typewriting and depositions, and if so, have you made any memorandums from these records and if so, pro-
498 duce them? A. Yes sir. Here are the three cases. (Hands Mr. Edwards the memorandums.)

Mr. TUCKER: I object to so much of the memoranda just produced by the witness, as indicates the price or charge for the typewriting of depositions and briefs and for the *per diem* charge, unless it be shown that such charges appear on the dockets of the Court of Claims in these three cases.

Mr. Edwards offers the memorandums in evidence.

The auditor sustains the objection but admits the paper to be filed.

The memorandum is marked "Exhibit Auditor No. —."

Q. Have you examined the case of Weatherby and if so, is this the memorandum taken from those records? (Hands witness memorandum.) A. Yes sir.

Mr. EDWARDS: This memorandum shows the price of the work.

Mr. Edwards offers this memorandum in evidence leaving out the prices, for the purpose of showing the quantity of work done.

Q. Can you state what the custom was in regard to claimants paying the expenses of taking testimony, or whether the attorney had to pay the expenses, what was the usual custom? A. As far as I know myself what the custom was before me as a commissioner.

Mr. Tucker objects as the witness has not qualified himself by his answer to show what the custom was.

499 Mr. EDWARDS: The purpose of this is to show the universal custom was for the attorney to pay the fee when the fee agreement was fifty per cent.

The auditor states that he will sustain the objection.

Cross examination.

By Mr. TUCKER:

Q. Do you know whether in May 1893, John C. Scott was in the employ of Col. Moyers? A. No sir, I do not.

Q. Do you know whether in 1891 T. J. Healy was an employé of Col. Moyers? A. I don't know, I know in 1893 when I was up here, he was in Col. Moyers' employ.

The hearing is adjourned subject to notice.

DECEMBER 13TH, 1900.

Hearing pursuant to adjournment.
Messrs. Tucker and Birney.
Further hearing is adjourned to Tuesday, December 18th, at 2.30 p. m.

TUESDAY, *December 18th*, 1900—2 p. m.

Hearing pursuant to adjournment.
Mr. Tucker telephones that owing to the death of his mother he requests an adjournment until further notice.

MONDAY, *December 24th*, 1900.

Hearing pursuant to agreement.
500 Present: Mr. Edwards, of counsel for Col. Moyers.
After waiting for half an hour and no other counsel or parties appearing, the hearing is continued to Wednesday, December 26th, 1900, at 10.30 o'clock a. m.

WEDNESDAY, *December 26th*, 1900.

Hearing pursuant to adjournment.
Present: Mr. Edwards and Col. Moyers.
At ten minutes after eleven o'clock no other counsel or parties appearing, at the request of Mr. Edwards the hearing is adjourned subject to notice.

WEDNESDAY, *January* 9, 1901—2 p. m.

Hearing pursuant to notice.
Present: Messrs. Birney and Tucker, and Col. Moyers in person.

GILBERT MOYERS having been recalled by Mr. Birney testifies as follows:

By Mr. BIRNEY:

Q. In your statement filed heretofore with the auditor, you have charged against George B. Edmonds cash advances, for payments made by you to him to the extent of fourteen hundred and seventy dollars, and have heretofore in connection with your testimony before the examiner produced certain receipts and checks. Have you any other receipts or checks endorsed by Mr. Edmonds for moneys so advanced to him, if so please produce them? A. I have here a
501 check of April 8th, 1892, payable to Goorge B. Edmonds or order on the National Metropolitan bank for one hundred dollars, and endorsed by him.

Mr. Birney offers the check in evidence and it is filed and marked "Exhibit Moyers Jan. 9. 1901, No. 1."

WITNESS: I have also a check No. 272, National Metropolitan bank, dated May 7. 1892, for fifty dollars, endorsed by Geo. B. Edmonds and collected by him.

Q. Any other payments to Mr. Edmonds? A. These are all I have checks for.

Mr. Birney offers the check dated May 7. 1892, in evidence and it is filed marked "Exhibit Moyers Jan. 9. 1901, No. 2."

Mr. Tucker moves to strike out all of the testimony of witness contained in his answers to the preceding questions, except so much as merely identifies the checks produced in evidence, on the grounds that in this proceeding such testimony is incompetent under the statute prohibiting parties from testifying in suits by administrators whereby the estate of the intestate may be affected.

The auditor states that the objection is good as to one or two things in the testimony.

By Mr. BIRNEY:

Q. In your account to which I refer, that check of May 7th, 1892 for fifty dollars does not appear. Will you say whether that is an item in addition to anything that appears there? A. It is.

Q. Did you keep any record of payments made to Mr. Edmonds? A. I did.

502 Q. In what form? A. To a certain extent in my diaries.

Q. Did you keep diaries at that time, please explain what diary you kept of financial transactions? A. I kept a diary account all my life.

Q. Have you your diaries covering the period from the 1st. of June 1889, through the year 1892, here present? A. My diary for 1892 has become mislaid, I commence with 1889.

Q. You mean you have present your diary for 1889? A. Yes sir, I have in my hands my diary for 1889.

Q. Will you please turn to any entries made on your diary in the year 1889 showing payments for financial transactions with George B. Edmonds? A. Yes sir.

Mr. Birney offers in evidence the entry under the heading of Wednesday January 2d., G. B. Edmonds ten dollars.

Mr. Tucker objects to the admission of the entry in question.

Q. When were the entries in these books made? A. On the dates named in the account.

Q. And by whom? A. By myself.

Q. Are all the entries in these three several books, as far as you know, in your own handwriting. A. They are in my own handwriting.

503 Q. And all made at the times they purport to have been made? A. Certainly.

Q. Now the entry under date of Friday, February 8th. 1889, "Paid Edmonds $5.00"; under date of Sunday February 24th. 1889, "Paid Edmonds loan $15.00"; under date of Friday, March 29th. 1889, "Paid Edmonds $10.00"; under date of Thursday April 11th. 1889, "Paid Edmonds $10.00"; under date of Tuesday April

16th. 1889, "Paid Edmonds $5.00"; under date of Wednesday May 8th. 1889, "Paid Edmonds per T. J. Healey $15.00"; under date of Wednesday June 5th. 1889, "Paid G. B. Edmonds $25.00"; under date of Sunday June 23d. 1889, "Paid Edmonds $10.00", Monday September 23d. 1889, "Paid Edmonds $5.00"; Monday November 4th. 1889, "Paid Edmonds $10.00"; Wednesday November 20th 1889, "Paid Edmonds per T. J. H. $20.00"; I understand you to say you haven't here the diary for 1890? A. No, I looked for it today but could — find it.

Q. Is the book I now have in my hand the one you have identified as your diary for 1891? A. It is.

Q. The following entries, Tuesday June 2d. 1891, "Loaned G. B. Edmonds $25.00"; Monday June 8th. 1891, "Advanced G. B. Edmonds $50.00"; Tuesday August 25th. 1891, "Paid Edmonds per T. J. Healey, $25.00"; Saturday November 28th. 1891, "Loaned Edmonds $10.00"; Saturday December 5th. 1891, "Edmonds $20.00"; Tuesday December 8th. 1891, "Loaned Edmonds $15.00"; Thursday December 10th. 1891, "Paid George B. Edmonds loan check $30.00"; Thursday December 24th. 1891, "Loaned Edmonds $25.00."

504 In connection with that last entry I show you now a letter dated December 18. 1891, and signed "Geo. B. Edmonds," and ask you if you know the handwriting, if so, whose it is? A. The handwriting is that of George B. Edmonds and his signature is to the letter.

Mr. Birney offers the letter in evidence and it is filed and marked "Exhibit Moyers Jan. 9. 1901, No. 3."

Q. The book I now hold in my hands, is this your diary for 1892? A. Yes sir.

Q. There are the following entries, Sunday Jan'y 17th. 1892, "Loaned G. B. Edmonds check $50.00"; Wednesday Jan'y 20th. 1892, "Loaned G. B. Edmonds $25.00"; Tuesday February 9th. 1892, "Paid Edmonds $30.00"; Monday March 14th. 1892 "Loaned Edmonds $10.00"; Friday April 8th. 1892, "Loaned George B. Edmonds check $100.00"; Wednesday April 27th. 1892, "Loaned G. B. Edmonds $30.00"; Saturday May 7th. 1892 "Edmonds check $50.00"——

The WITNESS: The entry in the account under date of April 7th. 1892, should be May 7th. 1892.

Mr. BIRNEY continuing: Tuesday May 19th. 1892, "Loaned George B. Edmonds $50.00"; this entry also, by mistake in the account is as of April 19th. 1892. June 11th. 1892, "Loaned G. B. Edmonds $20.00"; June 18th. 1892, "Loaned Edmonds $25.00"; June 21st. 1892 "Paid Edmonds $25.00"; June 29th., "Loaned Edmonds $40.00" July 11th. 1892, "Loaned Edmonds $10.00"; July 23d. 1892, "Loaned Edmonds $15.00."

By Mr. TUCKER:

505 Q. Now this is your offer, of these three books? A. Yes sir.

Mr. TUCKER: To the admission of the entries described or to the books containing them I object. First, on the ground that the identification of the entries by the witness involves his testifying to transactions with the decedent; and secondly, upon the ground that there is nothing in the entries themselves showing that the sums mentioned therein to be advances upon the partnership account but on the contrary many of the entries show the sums of money mentioned to have been loans by Col. Moyers to Mr. Edmonds and as such they cannot have a part in the taking or stating of this partnership account.

Q. Are these books confined in their entries of payments to your transactions with Mr. Edmonds?

Mr. Tucker objects on the ground that an answer to the question will disclose the character of transactions with the decedent.
Mr. Birney states that the books will be filed.
The objection is overruled.
Mr. Tucker notes an exception.

A. They are my daily transactions with all parties with whom I had business in the payment of money or in the receipt of the same.

Q. You have heretofore testified that in the case of Fitzhugh administrator, you had local counsel to assist you, have you
506 now present the check with which you paid that local counsel? A. I have, the check is payable to Wm. A. Little Jr., att'y, $1,997.50, dated March 17th. 1899, on Riggs bank, and the endorsement is the signature of Mr. Little, the check is stamped paid.

Mr. Birney offers the check in evidence and it is filed marked "Exhibit Moyers Jan. 9, 1901, No. 4."

Q. The claim of Wilson Williams administrator of R. Williams, deceased, is one of those stated in the schedule produced by the complainant. Have you here present the power of attorney from Wilson Williams? A. I have. (Witness produces power of attorney)

Q. Look at the paper now shown you and see if that is power of attorney? A. Yes sir.

Mr. Birney offers the power of attorney in evidence and it is marked "Exhibit Moyers Jan. 9, 1901 No. 5.

Mr. Tucker objects to the paper offered in evidence on the ground that there appear to be two subscribing witnesses and it should be proved if at all by such witnesses.

Q. How long has this paper been in your possession? A. Ever since it was executed.

Q. You mean ever since the date it bears? A. Yes.

Q. Did you act on that paper in the prosecution of this claim? A. Yes.

507 Q. Where has this paper been since its date? A. In my office, I think it has no mark of filing—yes it has. It was filed on May 15th. 1888.

Q. Where? A. In the Court of Claims as appears by the marking.

Mr. Tucker objects to the paper.

Objection is overruled.

Mr. Tucker notes an exception.

Q. You have testified that you had in your employ Mr. R. A. Jordan who acted as commissioner and special attorney in taking proof. Are you now able to state the amounts you paid Mr. Jordan? A. I have in my hands the amounts paid him and in part the amount paid as commissioner's fees from October 1892 to December 1892. (Witness produces statement of account.)

Q. Are the amounts correct? A. Absolutely correct except as far as the examiners' fees go.

Mr. Tucker objects on the ground that there is nothing to show who prepared this paper.

Objection is sustained.

Q. From what sources did you make up this statement? A. I made it up from my diary.

Q. Are the entries in your diary shown here? A. Yes sir.

Q. Produce your diary of 1892 and give us the amounts
508 paid by Mr. Jordan as stated therein?

Witness produces diary and it is agreed by counsel that so far as the entries in the diary correspond with the paper now produced such entries shall be admitted in evidence.

Mr. Birney offers the paper in evidence and it is marked "Exhibit Moyers Jan. 9. 1901, No. 6."

Q. The case of John Ehs is one of those stated in the schedule produced by the complainant. Have you here present the petition and power of attorney executed in March 1872, by Mr. Ehs? A. I have the original petition and power of attorney executed March 2d. 1872, five years before this contract was made.

By Mr. TUCKER:

Q. Are the subscribing witnesses there? A. I think so, I know it was executed in March 1872.

Mr. Birney offers the petition and power of attorney in evidence and it is marked "Exhibit Moyers Jan. 9. 1901, No. 7."

Mr. Tucker objects.

Objection is overruled.

Mr. Tucker notes an exception.

Q. The case of Temperance Herd administratrix of Samuel Herd, is one of those stated in the schedule produced by complainant. Have you here the petition in that case, if so, produce it and state in whose handwriting it is? A. I have. It is in the handwriting of one of my clerks, I think T. J. Healey. It was made out in my office on one of my blanks and is in the handwriting of one of the clerks in my employ. I may be mistaken as to its being Healey's handwriting. It bears date May 9th. 1887 and prior to that year I was employed in that case.

509 Mr. Birney offers the paper in evidence and it is marked "Exhibit Moyers Jan. 9, 1901, No. 8."

Mr. Tucker objects.

Objection is overruled.

Mr. Tucker notes an exception.

Hearing is adjourned to Thursday January 10th, 1901 at 10.30 a. m.

JANUARY 10TH, 1901—10.30 a. m.

Hearing pursuant to adjournment.

Present: Messrs. Tucker and Birney.

At the request of Mr. Birney the hearing is adjourned to Friday January 11th, 1901, at 10.30 a. m.

MONDAY, *January* 14, 1901—11 o'clock a. m.

Hearing pursuant to adjournment from January 12th, 1901, Col. Moyers having been reported by his counsel as being too ill to appear at that time.

Present: Messrs. Birney, Tucker, Edwards, Butterfield and Col. Moyers.

Mr. TUCKER: I move to strike out the books of entry heretofore offered in evidence, upon the grounds heretofore stated in support of my objection to their admission in evidence, and also upon the further ground that they are not such books of account or books of original entry as would be competent or admissible evidence to show payments by the witness to the decedent.

GILBERT MOYERS having been recalled testifies as follows.

510 By Mr. BIRNEY:

Q. In your previous examination you were interrogated concerning the expenses incurred in the prosecution of the Edmonds claims, and stated that you would produce a statement of your office expenses. Have you such statement and are you able now to state more accurately what your expenses were in the prosecution of these cases? A. I have examined my books as to expenses for the years 1891, 1892 and 1893, covering the period when proof was taken in the larger portion of these cases in which Mr. Edmonds claims an

interest, or his representative. I find that the average yearly expenses——

Mr. Tucker objects to witness stating the result of his examination of his books, such testimony being incompetent.

The objection is sustained.

Q. What are the items which went to make up your office expenses during the years 1891, 1892 and 1893? A. Clerical hire, rental, commissioner or notary fees paid, travelling expenses, in short all expenses incident to the prosecution of the business.

Q. Are you able to state what were your expenses for rental for those years? A. I am not, without reference to my books.

Q. Can you state what were your outlays for clerk hire? A. I cannot, without the same reference. I can state approximately the rental, in fact can give it quite definitely. I have been occupying an office in the Washington Loan and Trust Company's building which I paid seventy-five dollars for, I think I was there two or three years.

511 Q. Before that, what office did you occupy and what did you pay? A. I occupied an office on the second floor at 1305 E street.

Q. What was the rental? A. I think twenty dollars a month, as I calculate it now to the best of my recollection.

Q. Can you approximate the proportion which the Edmonds cases represent of your business labors during the years you have mentioned? A. From one-third to one-fourth.

Mr. Tucker moves to strike out all of the witness's testimony as to his general office expenses, on the grounds that the decedent's estate is in no way chargeable with the payment of any proportion thereof.

Q. Since the last session have you found your diary of 1890 not then produced? A. Yes sir. (Witness produces diary.)

Q. Was this diary kept as you have testified the others were kept? A. Yes sir.

Mr. Birney offers in evidence the entries as follows——

Mr. Tucker objects to the offer in evidence of any entries the entries not being admissible apart from the entire book.

Objection is sustained.

Mr. Birney states that the books will be offered for the inspection of the auditor.

The AUDITOR: The entries submitted by counsel are allowed to be offered in evidence with the understanding that the book will be filed and the entire book will be available for reference for the purposes of this account.

512 Mr. BIRNEY: Friday, January 10. 1890, "Paid Edmonds $20;" Saturady, March 15. 1890, "Paid Edmonds $10.00;" Friday, March 21. 1890, "Paid Edmonds $15.00;" Thursday, November 6. 1890, "Paid Edmonds $40.00;"——

Mr. Tucker objects to the admission of the book in evidence, upon the ground that it does not appear to be a book of accounts or book of original entries such as would be admissible in evidence herein, also upon the ground that the payments alleged to have been entered therein are not binding upon the estate of the decedent in that it is not shown that such payments were advances on the partnership account or if loans whether they were repaid *were* not, also because the book and the accompanying testimony of the witness is not admissible in evidence under section 858 Revised Statutes of the United States.

The AUDITOR: The book and testimony of the witness relating to the entries therein, is received subject to objections of counsel to be considered at some convenient stage of the reference.

WITNESS: In the course of my testimony I stated I would present the vouchers received by me for payments of fees to H. K. Martin. I now produce the receipt from his administratrix, dated March 8th. 1900.

Mr. Birney offers the receipt in evidence.

Mr. Tucker objects on the ground that it is improperly proved and also upon the ground that the payments of this sum of money in no wise binds the estate of the decedent. The receipt is filed marked "Exhibit Moyers Jan. 14 1901 # 1."

513 Q. From whom did you receive this receipt? A. From the attorney of Mrs. Martin, I forget his name.

Q. Had you made the payment represented by this receipt? A. I did.

Q. Did you make any other payments to H. K. Martin, on his account, than the one for which his administratrix receipts? A. I did.

Q. Are those entries in your diaries? A. They are.

Mr. Birney offers in evidence the entries of payments to H. K. Martin appearing in the diaries of 1892 and 1893 and for convenience refers to them as follows: September 21. 1892, $10.00; October 1. 1892, $11.00; October 6. 1892, $50.00; November 21. 1892, R. M. Varner case, $9.47; November 26. 1892, $20.00; December 25. 1892, $50.00; May 1, 1893, $50.00; May 16. 1893, $50.00; June 10. 1893, $2.50.

Q. Can you state whether these entries of payments were in cases in which Mr. Edmonds was associated with you? A. They were except possibly the Varner case.

Cross-examination.

By Mr. TUCKER:

Q. I direct your attention to the Fitzhugh case which you admit was a partnership case and in which you state you received a fee of

one-half. Please state where the contract is, upon which you acted for the original claimant in that case. A. My recollection is that it was surrende-d at the time of settlement, to the executor Samuel Fitzhugh who resides near Fredericksburg.

514 Q. Do you remember its contents? A. I remember Mr. Little was to have a certain percentage.

Q. Who was the contract between? A. I could not say.

Q. Was Mr. Edmonds' name mentioned in it? A. I am not positive.

Q. In that account you claim credit for a percentage of expenses in procuring, preparation and prosecution of the case. What did that expense consist of? A. Employment of attorneys.

Q. Who were the attorneys? A. C. C. Clements was one.

Q. Where is he to be found? A. In Loan and Trust Company's building.

Q. How much did you pay him? A. $600.00. Another attorney was Eppa C. Hunton.

Q. How did you fix that proportion of $600.00. A. I averaged it.

Q. How did you average it? A. By the amount of fees and from the appropriation in that bill.

Q. How much fees did you receive? A. I forget now, this was a fair average proportion.

Q. What services did they perform in the Fitzhugh case? A. They made the usual presentation of facts before the committee.

515 Q. In which house? A. In the House of Congress.

Q. Wasn't there a finding in this case in the Court of Claims? A. There was.

Q. And you paid them after the finding had been sent to the Senate? A. Yes sir.

Q. Then it was paid for lobbying services? A. No sir, not in the sense of lobbying, not for influence.

Q. You have, in the Thornton case, a similar charge of 22.45. How did you reach that? A. The same way as in the Fitzhugh case.

Q. You averaged it in the same way? A. Yes sir.

Q. You haven't the proportion by which you made this? A. No, I can produce it however. There were also other attorneys that I paid.

Q. You here account for the fees received in the Fitzhugh, Thornton and Welborn cases. In your answer to the original bill in this case you admit that the claim of J. C. Tappan was a partnership case. Why didn't you account for that? A. The answer to the bill was drawn up very hurriedly and I had not made a full investigation of my books, I found the Tappan case I had a year or so before I knew Mr. Edmonds and it should not be charged in the partnership account.

516 Q. In the Tappan case you and Mr. Edmonds were joint partners in the presentation of the case in the Court of Claims? A. By his presentation.

Q. You have the contract? A. I have.

Q. Please produce it at the next session? A. The contract I have, would be with the decedent, Sutton.

Q. Wasn't the contract sent to you by the claimant? A. I say I had no contract with Tappan as I remember Sutton died after giving me the claim.

Q. With whom was your contract? A. With the original claimant.

Q. Have you it now? A. I may have it or his administrator.

Q. Is it your practice to give the contracts back to claimants? A. Yes sir, in the settlement.

Q. Did you do that in the Hunt case? A. I did.

Q. You gave A. Hunt the original contract? A. Yes sir, that is my recollection.

Q. Your best recollection is that you gave the contract to A. J. Hunt? A. Yes sir.

Q. Do you remember when he was here? A. I think he was here in March 1899, perhaps I can give you a definite date if you will wait a moment.

Mr. TUCKER: No, that will do.

517 Q. In the Anna Hunt case, who was the contract signed by? A. Signed by Mrs. Hunt.

Q. Do you remember what date? A. I don't remember the date, I can ascertain definitely by reference to my books.

Q. Why did you state in your testimony before the examiner that your contract was with the administratrix? A. She was the administratrix of George Hunt.

Q. Did you retain a copy of the Anna Hunt contract in your office? A. I don't think I did, if I delivered it I didn't retain a copy.

Q. As a matter of fact didn't you deliver to Mr. Abijah Hunt, in April 1899, a paper that purported to be a copy of that original contract and which copy you swore before a notary public was a true and accurate copy? A. I am not prepared to state whether I did or not.

Q. You received from Abijah Hunt something in the neighborhood of ten thousand dollars? A. I received fifty per cent.

Q. You received the sum I have stated? A. My recollection is that it was between nine and ten thousand dollars.

Q. Did you surrender the original contract or a copy to Abijah Hunt? A. My best recollection is that I gave him the original contract.

518 Q. Will you make an examination and see if you can find the original of this contract in your office and produce it at the next session? A. I will.

Q. Did you have any correspondence with Mrs. Hunt in regard to this case? A. Yes sir, voluminous.

Q. Will you present some of it at the next session? A. I will.

Q. In the claim of R. Butler mentioned in the bill of complaint, did you not state in your testimony in the court below, that you thought the petition in that case was prepared by Mr. Edmonds, and if so, why didn't you include the Butler case in your statement of account? A. Well, I had the papers before me then and I stated just what they did show because I examined them carefully, if I made that statement it is correct.

Q. If you made that statement, why didn't you include that claim in the statement of account here? A. I dealt with the attorneys down there and I think they charged fifty dollars, I gave the amount in my *I gave the amount in my* original statement.

Q. Did you not state, in your testimony before the examiner in the Gall case, that your docket showed the entry of the appearance by yourself and Edmonds in the Court of Claims, and that your impression was you receive- this case from Mr. Edmonds? A. I did so state.

Q. Why isn't it in your account? A. It has not been settled yet.

519 Q. It has not been appropriated for? A. I think not, it is my impression that it is now pending before Congress.

Q. If it had been appropriated for you should have accounted for it? A. Yes, sir, I think I should.

Q. Have you any of the contracts or powers of attorney with or from the claimants in the cases set out in the bill of complaint in this cause, in the files of your office? A. I don't know of any, I haven't any of the Edmonds contracts.

Q. Then those cases were Edmonds' cases? A. Only so far as I have admitted them to be, in my testimony.

Q. Have you any of the contracts with, or powers of attorney from the claimants in the cases described in the Exhibit No. 1 to the bill of complaint in this case?

The WITNESS: You mean given by Edmonds?

Mr. TUCKER: No.

A. I cannot say what I have at the office, I may have some contracts but very few as these cases were mostly represented by administrators and I generally return the contracts to the administrators to be used in their settlement of the estate. I may have some powers of attorney.

Q. Where you returned the contracts to the administrators did you make no memorada on your dockets or among your papers, that you had made such disposition of the contract? A. Where I sent them by letter the letter press copy book will show, where the settlements were made here I did not make any entries but just turned the papers over.

520 Q. Will you produce at the next session any of such contracts or powers of attorney, or copies of any such letters, you may have in your possession? A. I will.

Q. Have you any memoranda showing the payments for expenses, that you made in the cases received from George B. Edmonds set

out in your account heretofore filed? A. I have in some of them, in fact the memorandum presented today for money paid Martin and also Mr. Jordan, relate mainly to those cases.

Q. Are those the only memoranda you have? A. I have receipts from Mr. Shelton and there may be, among my old papers, other receipts.

Q. The receipts and memoranda you have mentioned are the only ones you have been able to find so far? A. I cannot say, there may be some at the office I have not had occasion to——

Q. Please explain why, conducting as you did in partnership with Mr. Edmonds, from one-fourth to one-third of the cases that you had, you kept no books of account as managing partner showing your receipts and expenditures in such cases? A. One reason was this, I could not keep an accurate account as to particular cases because a man travelling as my representative or travelling myself in taking testimony would have other cases at different places and it was only as to the commissioners' fees that it could be possible to. In short, my expenses were lumped. I would pay a commissioner thirty, forty or fifty dollars in sundry cases without specifying the exact amount in each case, He might have taken testimony in more than one case, He simply got what was the usual fee in taking testimony.

521

Q. So you assumed that in these various cases you paid the commissioners' fees and travelling expenses? A. I haven't assumed anything, I stated it as a fact as shown by Shelton, stated as fees paid him as shown by fees paid through Mr. Martin and others.

Q. Have you got any copy or particular account of your expenses, thus, how do you make up one now? A. I made it up by what was the — of the charges.

Q. And you assumed that you made such payments? A. I did.

Q. You have produced, have you, all memoranda and receipts that you have to show the payments made by you on account of expenses in the Edmonds cases? A. All that I have found thus far, I may find others, if I do I will produce them.

Q. In the matter of the three cases mentioned in the bill of complaint but not included in Exhibit No. 1, namely that of J. E. Burgwin, that of William T. Fauber, and that of Richard Mayse, please state whether you received the appropriations to pay the judgments in those cases. A. I recently received the fee in the case of J. A. Burgwin, administrator of Dorsey S. Deloatch.

Q. How much? A. My recollection is twenty-five per cent.

Q. That would be how much money? A. One-third or one-fourth of $315.00.

522 Q. Can you make sure of that in any way? A. I can by reference to my books.

Q. Will you do so please? A. Yes sir, and will do the same thing in the case of Fauber and Mayse.

Q. You have testified you made certain payments to a Mr. Jordan on account of some of these Edmonds cases, as appears from

memoranda of payments taken from your diary. State how you know those payments were made on account of the Edmonds cases?

A. Because he was working on the Edmonds cases at that time.

Q. In what particular locality was he working when you made these payments? A. He was for some time at Corinth and I think he was at Port Gibson, Miss., and possibly at Oxford, Miss.

Q. Please name the cases in which he acted? A. I could not without my docket.

Q. Please ascertain the names of those cases and testify concerning them at the next session? A. I will.

Q. In the case of George Show, by your supplemental answer you state that you didn't receive the appropriation to pay the judgment. Will you kindly explain why you didn't prosecute that case to a completion and receive the fee? A. Because there was another attorney in the case.

Q. Who was he. A. I forget now, I gave it in my testimony.

523 Q. It appears that George W. Z. Black who was the attorney before the commissioner of claims in that case, filed a petition in the Court of Claims, January 6, 1890, presented the case and received the fee, but it also appears in the files of the Court of Claims there is a power of attorney to Edmonds dated February 6th. and filed in the Court of Claims May 1. 1888, and you and Mr. Edmonds entered your appearance in that case May 8th. 1888. Why, if this is so, didn't you continue the prosecution of this case of Show's to completion instead of allowing yourself to be substituted by another attorney?

Mr. Birney objects to the question as the records in evidence only show an appearance was filed by Edmonds in which Moyers' name is mentioned, but does not show that Col. Moyers filed an appearance or had any knowledge of the case at any time.

The auditor states that presumably in a partnership of this kind one partner has the right to sign the partnership appearance in a case and the other partner is supposed to have knowledge of the case.

The objection is overruled.

A. I know nothing about the case, it wasn't entered upon my dockets. Mr. Edmonds superintended the entry of his cases upon my office dockets as will show when the dockets are produced here, and this case was never furnished me by him, nor did I have any knowledge that Black was the attorney before the commissioner of claims. I never was recognized as attorney nor did I ever

524 sign to be recognized, I know nothing about the case. And the same condition of affairs existed in the case of M. C. Baylor.

Q. Does the explanation you have given apply equally as that of the Show case? A. It does.

Hearing is adjourned to Wednesday, January 16th, 1901, at two o'clock p. m.

WEDNESDAY, *January 16th*, 1901—2 p. m.

Hearing pursuant to adjournment.
Present: Messrs. Birney, Tucker, Butterfield, Edwards, and Moyers.

GILBERT MOYERS, recalled having been recalled for further cross examination testified as follows:

By Mr. TUCKER:

Q. Referring now to your payments to C. C. Clements and Eppa Hunton, please state again the aggregate amount you paid them for services? A. $8,500.00.

Q. For what was that payment made? A. For services in Congress.

Q. In what matter? A. Securing the appropriation to pay this and other claims.

Q. Were you to pay them a proportion of the amount of fees you should receive in the cases they performed services in? A. No.

525 Q. How was your fee to them to be paid? A. By contract specifying the amount, $6,000.00 to C. C. Clements and $2,500.00 to Hunton.

Q. How did you reach the item of $625.00 that you mentioned in the Fitzhugh case? A. As I explained before.

Q. Please explain again? A. By the aggregate amount of my fees.

Q. In what cases? A. In cases covered by the appropriation.

Q. What appropriation? A. The Bowman bill.

Q. Was that the act of March 3d, 1899? A. Yes sir.

Q. What amount of fees did you receive from cases appropriated for by that act? A. I haven't been able since the last adjournment owing to the fact of being occupied yesterday in the chancery court. To aggregate that sum so, I cannot now give an accurate answer but will do so.

Q. Can you state approximately the amount of fees you received? A. I should say from $120,000.00 to $130,000.00, more or less.

Q. Have you been able to find the original contract or fee agreement in the Fitzhugh case? A. I have not.

Q. Do you know where it is? A. I think it must be in the hands of the administrator there was no disagreement about the fee.

526 Q. Did you ever see the original contract? A. Oh yes.

Q. Was it ever in your possession? A. It certainly was.

Q. Do you remember its contents, if so, state what they were? A. The contract was for fifty per cent.

Q. And signed by whom? A. It was signed as I recollect, by the administrator.

Q. By the terms of that contract to whom was the fee payable? A. I am not able to state whether it was a joint contract to Edmonds

and myself or to Edmonds individually but I am certain that I had a contract.

Q. Do you remember the date of that contract, if so, state it? A. I do not.

Q. Have you been able to find the contract or fee agreement in the Tappan case? A. No, I haven't.

Q. Have you made a search for it? A. I have made a partial search. The contract in that case was to me individually, I had the case long before I ever knew Mr. Edmonds.

Q. Where is the contract? A. I told you I could not find it, it may be among the files of my office or have been returned to Tappan.

Q. Have you before you the office files in that case? A. I have.

527 Q. The Court of Claims or your office files in that case? A I have in my hands the court papers in that case.

Q. Is there a power of attorney among those papers? A. I find a power of attorney in the original claim before the commissioner of claims, to Edward Wheeler of Little Rock, Arkansas, I find no other power of attorney in the case.

Q. Is there any entry of appearance by Edmonds and yourself in that case in the Court of Claims or files? A. Yes sir, I find an appearance that was evidently filed by Mr. Edmonds as it bears his handwriting as I recollect his penmanship. This was filed November 9th.

Q. Please produce it? A. I was trying to make out the date of filing. (Hands paper to counsel.) November 9th is the stamp mark and looks like 1888.

By stipulation of counsel a copy of the entry of appearance mentioned by the witness and taken from the files of the Court of Claims in the case of Sumner I. Sutton is here copied in the record as follows—"No. 5160 Cong. In the Court of Claims. December term 188–, 188– Samuel I. Sutton *vs.* The United States. Appearance Filed by Moyers and Edmonds att'ys for claimant." (Filed Nov. 9 is the stamp mark with the year so badly blurred as to be indistinguishable.) The body of the entry of appearance is as follows—

"In the Court of Claims. December term 18—. —18. Sam-

528 uel I. Sutton *vs.* The United States No. 5160 Congressional Appearance. Notice is hereby given of my appearance as attorney for the claimant in the above entitled case. Moyers & Edmonds attorneys." The appearance is in a printed form with a printed signature "Gilbert Moyers" attached thereto, the word "Gilbert" is erased by a pen mark being drawn through it, and the name Edmonds substituted therefor.

Q. This appearance is on one of your printed blanks? A. It is.

Q. After the filing of this appearance in the Court of Claims what is the next paper among the files bearing your name? A. I could not say whether it is after or before because the year is in-

distinct, it can only be determined by reference to the dockets of the court or my own dockets, but my dockets would not show the filing of that appearance.

Q. Name some of the other papers among those filed that were filed by you? A. Here is a motion filed by myself as the attorney on December 18th. 1889, requesting that the original petition stand until loyalty is determined. That is on one of my blanks.

Q. You filed this last named paper? A. It purports to have been filed by me.

Q. Do you recognize the handwriting upon it in the title, is that by yourself or one of your clerks? A. I should judge that is in the handwriting of Mr. Beardsley or possibly Mr.

529 Healey.

Q. Both your clerks at that time? A. Beardsley was there at that time I think.

Q. Subsequently to the filing of that motion who appears from the papers filed, to have acted as attorney in that case? A. Myself, solely.

Q. At the time of filing of this motion and at the time of filing subsequent papers in that case by you, you were in the habit of examining the court files in that case? A. I have no doubt I examined it.

Q. You knew then of the existence of this appearance by Moyers & Edmonds? A. I must have done so.

Q. Did you ever move to strike out the appearance of Moyers & Edmonds? A. No, because it wasn't necessary, I was the sole attorney recognized in the court.

Q. Where is the contract with the claimant in that case? A. I haven't been able to find it as yet.

Q. Have you been able to find any trace of it among your office papers or in your letter press copy book? A. No, I haven't, but there was no dispute between Tappan and myself as to the fee I was entitled to, I had an extensive correspondence with him and think it is here in the jacket. (Witness produces a jacket of papers) So far as correspondence is concerned I have part of the correspondence here. There was a letter in regard to this case showing my employment of date of August 20th, 1885.

530 Q. What are you reading from? A. From memoranda I took at the time of examination.

Mr. Tucker objects.

Q. Have you been able to find any trace of it among your office papers or in your letter press copy book? A. No sir.

Q. Will you make any further search possible and produce this contract or some paper showing what disposition you made of it if possible, at the next hearing? A. I will.

Q. Now referring to the claim of Anna Hunt, have you been able to ascertain from your letters or letter press copy books, what disposition you made of that contract? A. I haven't been able.

Q. Have you refreshed your recollection so as to say you delivered to Abigail Hunt the original contract or a copy of it? A. It is my impression that when Mr. Hunt came here to make a settlement and receive the money coming to the estate, that he told me he had no question as to the contract between myself and his mother the former administratrix of the estate, and he suggested to me that he should have the original contract which he was satisfied was fifty per cent. or have a certificate from me showing that fact. I may have given him a certificate but have no recollection.

Q. Didn't you as a matter of fact give Abijah Hunt a paper purporting to be a copy of that original contract containing an
531 affidavit by you that that was a true copy of the original contract with you? A. I have answered that question as definitely as I can.

Q. Have you, since the last session, made a search for the original contract with Mrs. Anna Hunt? A. I have not.

Q. Why? A. I haven't had the time.

Q. Will you make a search and produce that contract if you have it, at the next session? A. I will.

Q. Have you been able to find any correspondence with Mrs. Hunt in regard to that claim, among your papers? A. I had a great deal of correspondence with her in her lifetime. I am not certain whether I have it here or not. I hold in my hand a package of letters and other papers received from Mrs. Hunt in the regular course of business in the prosecution of this claim.

Q. Will you let me look at it? A. With pleasure. (Witness hands counsel the package.)

Mr. Tucker offers in evidence the papers just produced by the witness from his files in the case of Anna Hunt.

Mr. Birney objects.

The auditor states that he will allow the papers to be filed subject to the objection.

Mr. Tucker offers in evidence the whole mass of papers just produced by the witness in this cause, for the purpose of showing
532 that his entire correspondence with the claimant Mrs. Hunt and those acting for her, postdated the date of the contract between her and Mr. Edmonds, and Mr. Edmonds' correspondence with her and with those who represented her, so as to show that the witness's connection with this claim postdated Mr. Edmonds' connection with it.

Mr. Birney objects.

Auditor states that the papers may be filed subject to objection, their competency to be determined hereafter.

Q. You have stated that the case of Jasper Gall was not included in your account filed before the auditor because that case was not appropriated for. Have you been able since the last session to refresh your memory or to ascertain as a matter of fact whether or not that case was appropriated for? A. I have not. It may have been.

Q. If it had been appropriated for, should not the fee received for it been included in your account? A. I have to state in regard to that particular case, that upon investigation and examination I find that case was originally presented to the commissioner of claims by Mr. Niles an attorney of Washington, who transferred his business to me to look after before Congress and the courts, early in the '80's soon after the passage of the Bowman act. Therefore I had charge of this case prior to my knowledge of the existence of a man named Edmonds. Furthermore, Mr. Edmonds never claimed this case by entering his name on the margin of the dockets. I have the dockets here.

Mr. Tucker moves to strike out the last part of the answer
533 of witness on the ground that it is prohibited by section 658 of the Revised Statutes of the United States as being a transaction with the deceased.

WITNESS: Having the papers now in my hand I find that this case was, beyond doubt, filed by Mr. Samuel V. Niles.

Q. Did you not state in your testimony before the examiner that your dockets showed the appearance of Mr. Edmonds and yourself in the Court of Claims? A. I think I did.

Q. Why, if you got that case from Mr. Niles, did you allow Mr. Edmonds to enter his name on your docket? A. Not on the dockets, Mr. Edmonds had access to the papers in my office, he was very intimate with Beardsley and I see he used one of my blanks, using the name of Moyers & Edmonds, erasing my name.

Q. Will you please produce your docket showing this entry. I read from page 62 of the record of testimony taken before the auditor at the last session, "Did you not state, in your testimony before the examiner in the Gall case, that your docket showed the entry of the appearance by yourself and Edmonds in the Court of Claims, and that your impression was you received this case from Mr. Edmonds? "I did so state." "Why isn't it in your account?" "It has not been settled yet." "It has not been appropriated for?" "I think not, it is my impression that it is now pending before Congress." The question now is whether, if as a matter of fact,
534 that claim had been appropriated for, why you didn't include the payment in the account filed before the auditor? A. For the reason as stated, that I found this case was represented by Mr. Niles and Mr. Niles employed me to look after these cases before the commissioner of claims and have them entered and prosecuted. Hence I do not regard this case as an Edmonds case at all, that is, a case coming to Mr. Edmonds through my knowledge.

Q. You were called upon at the last session to produce any contracts with, or powers of attorney, from the claimants in the cases set out in Exhibit No. 1 attached to the bill of complaint in this cause. Have you been able to find among your private papers or records, any such powers of attorney, if so please produce them? A.

I have found some. I have here a fee agreement in the case of James W. Harding, administrator, of James H. Maury.

Mr. Tucker offers in evidence the paper just produced by witness.

WITNESS: I prefer to leave a copy.

Witness here produces the original of a fee agreement, dated September 7th, 1896, signed by James W. Harding, Port Gibson, Miss., in presence of Charles S. Mason and W. D. Reiders, by the terms of which he employs Gilbert Moyers of Washington, D. C., as his attorney to prosecute the claim of his decedent against the Government and Congress; to pay him a fee of fifty per cent. It is agreed between counsel that the abstract here given of the same, shall
535 be considered in evidence in lieu of the original.

WITNESS: I have here a fee agreement in the Henry T. Cate case, and the power of attorney in that case, as I understand, has been filed. It was executed January 27 1888 to me. I think it must be an exhibit to the deposition.

Mr. Tucker offers in evidence the paper here produced by witness.

WITNESS: In the case of John P. Davidson I have letters and files showing the settlement of that case and to whom the fees went. It also shows the contract.

Mr. TUCKER: I did not call for that paper.

WITNESS: I don't notice any more contracts or powers of attorney that I have here, but doubtless there are others in the office which I will be able to produce.

Q. Do I understand you have no other powers of attorney or contracts to produce today? A. I don't see any.

Q. If you have any will you produce them at the next session? A. I will.

Q. Have you your letter press book showing the copy of any letter of transmittal of any original contract or power of attorney in any of the cases mentioned in Exhibit No. 1 to the bill of complaint? A. I have before me my letter book containing a press copy of the letter showing the disposition of the fee-agreement made in the John P. Davidson case.

(Witness here produces a copy of the letter which reads as follows,)

536 "JULY 1, 1899.

E. P. Treadway, lawyer, Rome, Ga.

DEAR SIR: As per instructions of the 29th ultimo., I have on this day mailed to the First National Bank of Rome, the warrant of Manervia C. Davidson administratrix of John P., for $1,830.00, together with my fee agreement for fifty per cent., receipt for $915.00 and your letter, with instructions to the said bank to remit me my fee by eastern exchange. Please have her collect at the bank."

Mr. Tucker offers the copy of the letter in evidence.

Q. Have you any other copies of letters in your letter press book, showing any disposition you may have made of your fee agreements, of a character similar to the one just produced? A. That is the only one I have here, there may be others at my office.

Q. Will you kindly produce them at the next session? A. I will.

Q. Have you been able to ascertain how much money you received from the appropriation in the case of J. A. Burgwyn, administrator of Dorsey S. Deloatch? A. As I stated before, my fee in that case was twenty-five per cent.

Q. How much money did you receive? A. Twenty-five per cent.

Q. I want the amount of money? A. I can't give you the amount without having my books here.

Q. Will you produce your books here showing the amount you received? A. I will.

537 Q. If the appropriation in that case was $315.00, how much of that amount appropriated did you receive? A. Twenty-five per cent. of that sum.

Q. Why didn't you receive one-half? A. Because the contract didn't provide for one-half.

Q. Where is the contract? A. I had no contract, it was by agreement with the administrator. I had no contract.

Q. And after the appropriation was made you consented to take twenty-five per cent. of the amount appropriated? A. I consented to do that because it was the best terms I could get. They had received the money by the fact of the draft being sent direct.

Q. In the cases of Fauber and Mayse, have you been able to ascertain what, if anything, you received from the appropriation in those cases? A. Mayse? I don't remember any such case. According to my recollection that was one of the cases in which I wasn't the attorney.

Q. Do I understand you to say you were not attorney in the case of Mayse? A. That is my impression.

Q. How much did you receive in the Fauber case? A. I could not give it without reference to my books.

Q. Will you produce your books of entry such as will give the information sought, and present it at the next session? A. I will.

Mr. Tucker calls for the production of all the office files in
538 Col. Moyers' office relating to the cases mentioned in Complainant's Exhibit No. 1 to the bill of complaint.

Hearing is adjourned to Monday, January 21. 1901 at 2 p. m.

MONDAY, *January* 21, 1901—2 p. m.

Hearing pursuant to adjournment.

Hearing is further adjourned to Wednesday, January 23, 1901, at 2 p. m.

WEDNESDAY, *January* 23, 1901—2 p. m.

Hearing pursuant to adjournment.

By agreement of counsel the hearing set for this hour is continued to Monday, February 4, 1901, at 10 o'clock a. m.

MONDAY, *February* 4, 1901—10 a. m.

Hearing pursuant to adjournment.

Neither the counsel or parties appearing, the reference is continued subject to notice.

TUESDAY, *April* 2*d*, 1901—2 o'clock p. m.

Hearing pursuant to notice. A short time prior to the hour of hearing, Mr. Birney appeared and stated that he was engaged in the trial of a case in the circuit court and would be unable to go on to-day in this case.

At the hour of hearing, Mr. Tucker appeared and at his request the hearing was continued to Wednesday, April 3d. 1901, at two o'clock p. m.

539 WEDNESDAY, *April* 3*d*, 1901—2 o'clock p. m.

Hearing pursuant to adjournment.

Present: Mr. Tucker and Mr. Birney.

With the consent of the solicitors for both parties, it is ordered by the auditor that the defendant, Moyers, close his testimony in this reference within two weeks from this date, and that the complainant, Cummings, shall close testimony on his side within two weeks thereafter.

The reference is continued subject to notice.

FRIDAY, *January* 11*th*, 1901—10.30 a. m.

Hearing pursuant to adjournment.

Present: Messrs. Tucker and Butterfield.

A message having been received from Mr. Birney stating that Col. Moyers was too ill to appear, the hearing was adjourned to Monday, January 14th, 1901 at 10.30 o'clock a. m.

WEDNESDAY, *April* 17*th*, 1901—10 o'clock a. m.

Hearing pursuant to agreement.

Mr. Birney appeared and filed a certificate of Dr. Bulkley to the effect that the defendant, Moyers, was ill and unable to appear, and would be unable to appear for five days.

Mr. Birney also stated that the had notified Mr. Tucker.

Hearing is adjourned subject to notice.

FRIDAY, *May 3d*, 1901—10.30 a. m.

Hearing pursuant to notice.

Present: Mr. Tucker and Mr. Birney, Mr. Butterfield and Col. Moyers.

It is stipulated between counsel that the defendant is to
540 close his testimony within the next ten days, and that the complainant is to have two weeks thereafter in which to close his testimony.

Mr. BIRNEY: Counsel for the complainant has heretofore called for the files or any letters attached, in the case of Mrs. Anna Hunt, administratrix, referred to in the exhibits to the bill of complaint. Counsel for the defendant now produces four letters dated respectively, December 14th, 1887, September 15th. 1888, June 21st. 1890, and November 28th. 1890. The first two signed by A. E. Newton, who states himself to be the son in law of Mrs. Anna Hunt, and the second two signed by Mrs. Anna Hunt. All four letters being addressed to Gilbert Moyers.

The four letters are offered in evidence and marked Exhibits M, May 3/01.

GILBERT MOYERS having been recalled by Mr. Tucker for further cross-examination testifies as follows:

By Mr. TUCKER:

Q. Have you been able to find the fee agreement in the Anna Hunt case? A. No sir, it was lost and I gave a certificate at the time I settled, to the effect that it was lost.

Q. Did you keep a copy of this certificate? A. I did not.

Q. Tell us as nearly as you can, what this certificate contained? A. It contained a statement of the agreement between Mrs. Hunt and myself as to the payment of the fee for the collection of
541 the claim, I to put up all expenses. There was no dispute between us about that fee.

Q. It was signed by whom? A. By myself and Mrs. Hunt.

Q. Were there any subscribing witnesses to the fee contract? A. In a great many cases where the signature of the claimant is known these papers are not witnessed.

Q. When did you first discover that this original contract with Mrs. Hunt was lost? A. I discovered it when I came to search for it at the time of settlement when Abijah Hunt came on.

Q. Did you tell him that you had lost it? A. I did.

Q. And the paper that you gave him did not purport to be a copy of the original contract and did not state that it was a copy? A. It stated the terms of the contract and that was in lieu of the contract. It was given to him so that he could settle the estate.

Q. As a matter of fact didn't the paper that you gave to Abijah Hunt when he came to Washington to settle the claim of Anna

Hunt administratrix, purport to be a true copy of your alleged contract with Mrs. Anna Hunt, and not a mere certificate of the contents of that paper? A. It may have been. I made a certificate that it was a true and correct copy as to the amount of fee I was to receive in the event of success.

542 Q. How could it have been a true copy if you had lost the contract? A. I had the blank form I had used and which I kept in my office.

Q. Have you had only one form of that blank which you use? A. Since the Court of Claims has had control of these cases I have had only the one form.

Q. What you did was to fill out a blank form of contract and swear that that was a copy of the contract between Mrs. Anna Hunt and yourself, while the original contract was lost? A. It purported to be substantially as I stated, that it was a copy.

Q. Did you swear at the time before a notary public that it was an exact and actual copy of the original contract? A. Probably I did.

Q. The original contract was lost and you did not have it at hand? A. Yes sir.

Q. Have you your letter press books for the years 1887 and 1888? A. They are at my office, I did not bring them down because I didn't know that you requested the letter books. I can send for them.

Q. I should like to have you present those books either at this or the next session. A. I will.

543 Q. It appears from the testimony taken before the examiner in this case that Bartley & Jenner and Adams & Speed were the original attorneys before the Southern Claims Commissioner in the Anna Hunt case. That being so, how do you account for your appearance for Mrs. Anna Hunt? A. There was no one connected with the case that was living except Mr. —— and the case had been rejected by the Southern Claims Commission.

Q. Then as I understand, any claim that was rejected by the Southern Claims Commission could be taken up by any other attorney and prosecuted? A. No sir, not if the attorney or record was living, in this case Mr. —— who was the only one connected with the case, that was living, did not appear as the attorney of record.

Q. I understand that you discovered the loss of this Anna Hunt fee contract at the time Mr. Abijah Hunt came to Washington to secure a settlement of the claim? A. I said, either then or shortly before. I commenced a search for it when I sent for him.

Q. Discovering its loss you gave him this copy? A. He requested that in order that he might settle the estate.

Mr. Tucker offers in evidence a copy of a fee agreement between John P. Davidson and Gilbert Moyers, dated January 9th. 1893, and the copy of a receipt signed by Gilbert Moyers for $915.00 given by Manervia C. Davidson, administratrix, together with a certificate of

the clerk of court of ordinary of Floyd county, Georgia, with the same, that the papers mentioned are correct copies of originals which appear of record in his office.

544 It is stipulated between counsel that further or other proof of the copies of the documents mentioned, shall not be required, but the copies here introduced in evidence shall be received in lieu of the originals.

Q. Have you produced here your office files relating to the cases mentioned in Complainant's Exhibit No. 1 to the bill of complaint? A. I have all, with one or two exceptions, I think.

Q. Will you produce your office files in the case of H. L. Cate? A. That is one of the two or three I failed to find.

Q. Have you your docket containing any entries made in that case? A. Yes, but cannot find the index of it.

Q. Have you your office papers in the case of J. C. Tappan administrator of —— Sutton? A. Yes sir.

Q. Please produce them? A. Here they are. (Hands counsel the papers.)

Q. Have you the docket entries in this case with you? A. Yes sir. (Produces them and hands to counsel.)

Q. Now in the case of R. Butler, have you your office papers here? A. Yes sir. (Witness produces papers.)

Q. Do I understand you to admit that the Butler case was one of the cases in which you were jointly interested with Mr. Ed-

545 monds and do you admit it now? A. Yes sir.

Q. You have heretofore submitted the office papers in case of the claim of John P. Davidson? A. I don't know that I have, they are here now. (Witness produces papers.)

Q. I find in your office jacket in the Davidson claim a power of attorney to yourself from John P. Davidson dated January 9th, 1893. Is that the power of attorney under which you prosecuted the claim? A. I am not certain whether I received a power of attorney prior to that date or not, the case was referred to the court in 1889. That power of attorney I received from A. W. Ballew the local attorney in F——. I find no papers antedating 1893 in this jacket in the Davidson claim.

Q. On January 12th 1893 appears to be a letter from Mr. Ballew addressed to you stating that he encloses powers of attorney and fee contracts in the cases of Mrs. Griffith and J. P. Davidson, and in this letter the writer offers to divide the fee of fifty per cent. in these cases with you, or did your connection with the Davidson case commence with that correspondence? A. No sir, I got that case referred to the court myself as early as February 1889 and by a mistake of Mr. Healey and Mr. Edmonds they entered it as one of the Moyers and Edmonds cases, it was not and ought to have been changed. I made a complaint about it at the time. Mr. Ballew was the correspondent in the case prior to that time

546 and in settlement with him I paid him half the fee.

Q. Where is your fee contract? A. The fee contract was sent to Mr. Ballew.

Q. When? A. About sometime in July.

Q. What year? A. 1399, and the fee agreement was sent there to be used in the settlement of the estate.

Q. When? A. A few days previous. Mr. Ballew is entered on my jacket as local attorney. I haven't got the exact date.

Q. What I want is the date of that fee agreement? A. The date he sent the power of attorney, probably.

Q. What date was that? A. January 9th 1893.

Q. Then you prosecuted the claim in the Court of Claims before you had a fee agreement? A. None that I can find. Mr. Ballew had some correspondence before that date.

Q. Have you got the office papers or letters showing the connection you had with the case prior to 1893? A. Undoubtedly.

Q. There are no such papers in the jacket you just handed me? A. No sir, I didn't commence making jackets at a very early date in this claim, and the letter of course went into the general files in some cases. I have gone through the general files and taken
547 out the letters, I had correspondence about the case as early as 1889, it went to the court in February 1889. It was one of the cases in which Mr. Ballew was interested.

Mr. Tucker offers in evidence the docket entries of the defendant in the claim of John P. Davidson contained in docket marked H, page 20, here produced.

Q. Let me look at the docket entries in the case of W. R. Welborn? A. Yes sir. (Produces docket.)

Mr. Tucker offers in evidence the docket entries of the defendant in the claim of William R. Welborn contained on page 187 of docket H.

Q. Have you the office papers in the case of J. Gall? A. Yes sir. (Produces papers and docket.)

Mr. Tucker offers in evidence the docket entries of the defendant in the claim of Jasper Gall, Iberia, Louisiana, to be found on page 38 of docket H.

Mr. TUCKER: I take from the jacket you have just handed me in the Jasper Gall case, a card containing the following endorsement in pencil, "Jasper Gall 6828, this case I have admitted was received from Edmonds or at least have that impression." Did you write that? A. Yes sir, that is my handwriting.

Mr. Tucker offers the card in evidence.

Q. Have you the office papers and docket entries in
548 the case of S. Bagnell administrator of S. Braboy? A. Yes sir. (Produces papers and docket.)

At this point the hearing is adjourned.

TUESDAY, *May 7th*, 1901—11 a. m.

Hearing pursuant to adjournment.
Present: Messrs. Tucker, Birney, Edwards and Col. Moyers.

GILBERT MOYERS having been recalled for further cross examination testifies as follows.

By Mr. TUCKER:

Q. Have you the papers and docket entries in the case of S. Bagnell administrator of S. Braboy? A. Yes sir, they are here.

Witness produces papers and docket entries.

Q. I do not find in the office files of the claim of S. Bagnell, administrator of S. Braboy, any fee contract with the claimant or representative of his estate. Did you have such a fee contract? A. I had a fee contract.

Q. Where is it? A. I could not find it. It is dated away back in the 70's, I made a settlement with him at fifty per cent.

Q. Where is the contract? A. I could not find it. I am not certain whether I gave it to him or not.

549 Q. I find no papers in your jacket antedating 1892. Have you any papers now, prior to that date? A. As I said, prior to a certain time I kept no jackets and I have gone through my letter files to the extent of my ability to find all papers relating to these things and to place them in their jackets.

Q. In this particular case you could find no correspondence antedating 1892? A. I suppose not.

Q. Let me look at your docket please?

Witness hands docket to Mr. Tucker.

WITNESS: I wish to say that when claims were disallowed by the commissioners of claims there being no other remedy offered by the courts these claims were abandoned, and not until the passage of the Bowman act was there any way of relief. In that way possibly some of my cases were destroyed or laid aside as being dead, among my dockets.

Q. I find no entry on your docket, or the page devoted to this claim of S. Bagnell administrator, prior to 1890, when there is this entry, "March 1890, to Court of Claims." Does that date indicate when you first became connected with that claim? A. Certainly not. It indicates when I first became connected with this case in the Court of Claims, and these are dockets in the Court of Claims.

Q. I see the docket entries in the matter of this claim are headed as follows,—on page 257 docket H., "S. Bagnell, administrator Page Braboy heir of Tena Braboy deceased, Hines county, Missis-
550 sippi." Why was the name of Page Braboy as heir of Tena Braboy entered on your docket? A. Because I was advised by Mr. Bagnell that Tena Braboy was dead and had left this heir who was interested in the claim.

Q. Was the contract with Tena Braboy? A. It was in charge of Mr. S. Bagnell who was the attorney in the case there, and I proceeded to prosecute the case upon an equal share with him in the fee.

Q. But you find no correspondence prior to 1892? A. No sir.

Q. I would like to see the docket entries in the case of Mrs. Anna Hunt? A. Here they are.

Witness produces docket G page 93 containing entry of the Anna Hunt claim.

Q. The next case is that of Mrs. H. E. Ladd. Have you your office papers and docket entries in that case? A. Yes sir.

Witness produces jacket and entry on page 167 docket K.

Q. Have you got the contract with the claimant in this H. E. Ladd case? A. I think not. My recollection is, that I sent that contract down there to the administrator to be used in the settlement of the estate. It is a case I had with Col. McAllister before the commissioners of claims.

Mr. Tucker offers in evidence the office papers and docket entries produced by the witness in the H. E. Ladd case. Mr. Birney objects to the papers being offered in bulk. The auditor states
551 that the papers may be offered and filed subject to the objection.

Q. In the case of J. Harding, administrator, I hand you a paper taken from your office files, purporting to be a fee contract with James M. Harding, administrator, with yourself, dated September 7th. 1896, whereby he agreed to pay you a fee of fifty per cent. in that claim. I call your attention to a docket entry in your docket H, page 298, showing that the appearance was filed in the Court of Claims in that case in 1890, and ask you to explain why the contract was entered six years after the appearance was entered in the Court of Claims? A. This fee contract was apparently given to replace one that was lost, as I had this contract away back in the 80's before the commissioners of claims.

Q. I find no correspondence in the jacket relating to this Harding claim antedating 1890. If you had any connection with that claim prior to that date how do you account for the absence of any correspondence? A. As I explained before, these are Court of Claims jackets and they contain only correspondence and papers that were connected with the case in the Court of Claims, and have no connection with or relation to any proceedings had previously before some other tribunal. The same with the dockets.

Q. In the case of W. Williams administrator, have you the office papers and docket entries in that case? A. Yes.

Witness produces papers and entry of page 136 of docket E.

552 Q. Did you have any contract with the claimant in this Wilson Williams claim? A. I did.

Q. Where is it? A. It was sent to the administrator or lost or mislaid.

Q. Do your letter books show whether it was sent to the administrator or not? A. Among the docket entries in the case of Wilson Williams administrator of R. Williams, is one showing that on May 14th., 1888, I filed a power of attorney which I do not find among the Court of Claims papers now.

Q. Now in this case of J. Hornbaher, have you the office papers and docket entries in the matter of that claim? A. Yes.

Witness produces papers and entry of page 247 of docket I.

Q. Did you have any contract or fee agreement in the Hornbaher case with the claimant? A. I am not prepared to state whether I had or not. I generally make contracts but I do not find any in the jackets. Mr. Gray had to do with that case and he may have possibly retained the contract.

553 Q. Have you any office papers or docket entries in the case of Thomas W. Russell? A. That was not my case. That case was prosecuted by Mr. Dye.

Q. Have you any entry of it on your docket? A. No.

Q. Now in the claim of M. C. Baylor have you any papers or docket entries? A. No, I never had the case.

Q. Have you examined your dockets to see whether you have any entries in the Russell or Baylor cases? A. I have.

Q. In the J. L. Roberts and George Shaw cases have you any docket entries? A. No sir, they were not mine, they were prosecuted by Mr. Black.

Q. Have you examined your dockets to see if you have any entries in those cases? A. Yes sir.

Q. Have you the office papers or any docket entries in the case of J. A. Burgwyn administrator of Dorsey S. Deloatch? A. Yes sir.

Witness produces papers.

Q. Did you have a contract or fee agreement in the Deloatch case? A. I do not think I did. I had some considerable correspondence with the administrator before I could secure a settlement and I was finally obliged to accept a fee of twenty-five per cent. as the warrant had been sent direct to the administrator.

554 Q. How do you account for the fact that you did not have a fee agreement? A. I do not know. At all events I could not produce a contract when the claimant died, and consequently I had to accept the offer of the administrator and finally made a settlement on the basis of twenty-five per cent.

Q. Did you find the docket entries in the Deloatch case? A. Yes sir.

Witness produces entry on page 111 of docket I.

Q. In the case of William T. Fauber have you any office papers and docket entries? A. Yes.

Witness produces papers and docket.

Q. I find among the office papers a power of attorney in the Fauber case dated May 21st, 1891. Did you have any previous connection with the case? I also find a fee agreement of the claimant in that case with one G. W. Graham dated May 21st, 1891. Did you have any previous connection with that case? A. I think not, I think Mr. Graham sent me the contract and fee agreement.

Q. Have you the docket entries in that case? A. Yes sir.

Witness produces entry of page 238 of docket K.

WITNESS: By the entry on the margin there it seems that I received that case from Mr. Graham as I stated.

555 Q. Are the Court of Claims papers in that case here? A. I think so.

At this point in the hearing a recess is taken until one o'clock p. m.

MAY 7TH, 1901—1 p. m.

Hearing after recess.

Present: Messrs. Tucker, Birney, Edwards and Moyers.

GILBERT MOYERS having been recalled for further cross examination testifies as follows.

By Mr. TUCKER:

Q. Have you produced your letter book in regard to the Williams case? A. The only record I have is June 7th, 1899, I received $115.50 fee on the collection of $237.00. I sent the fee agreement in the case of Wilson Williams to the cashier of the Merchants & Farmers Bank of Oxford, Mississippi, May 31st, 1899, as shown by my letter book containing copies of letters from April 21st, 1899, to July 10th, 1899, on page 458.

Q. Do you recollect the date of that contract? A. No, I cannot recall the date. In all probability it was made when I entered upon the prosecution of the case.

Q. When was that? A. Well in the Court of Claims I

556 entered upon the prosecution of this claim on May 14th, 1888. I filed a power of attorney in the Court of Claims and my fee agreement must have been of the same date as the power of attorney.

Q. Have you any office papers and docket entries in the case of Richard Mayse? A. I had nothing to do with that case. Robert Howard had that claim.

Mr. Tucker offers in evidence all of the office files that the defendant has produced which have not heretofore been offered in evidence

by him, for the purpose of showing that the defendant had no correspondence with the claimants prior to the year 1886 when the decedent George B. Edmonds held contracts or fee agreements with such claimants or their representatives.

Q. Do I understand you to testify that where it appeared that other attorneys than yourself appeared as attorneys for the claimants before the Southern Claims Commission, that you declined to prosecute these claims in the Court of Claims after their rejection by the Southern Claims Commission, on the ground that the claim belonged to the original attorney? A. I will state this in regard to that matter. Where there is an attorney who had cases before the commissioners of claims, and is still engaged, and was at the time
of the passage of the Bowman act of 1883, giving atten-
557 tion to his business here in Washington, I did not interfere in those cases except with the consent of such attorney, and in many instances we divided the fees. But in all cases where the local attorneys and attorneys here in Washington had gone out of business or had died I took the cases because of their being dead cases and represented by no one under agreement. Of course all such agreements and powers of attorney antedated the passage of the act of 1883.

Q. I hand you the Court of Claims papers in the case of Fauber, in which it appears that the firm of Chipman, Hosmer & Company of this city filed the original petition before the commission of claims, and also subsequently you and Mr. Edmonds entered your appearance as attorneys in the Court of Claims, and that thereafter you individually prosecuted that case. I ask you to explain why an exception was made in that case to your rule? A. There is no exception in that case. The firm of Chipman, Hosmer & Company did not exist at the time of the passage of the act of 1883, and as I am advised they were all dead at that time. Mr. Chipman may have been living but not giving attention to the business. The firm was out of existence.

Hearing is adjourned.

WEDNESDAY, *May 29th*, 1901—10.30 a. m.

Hearing pursuant to adjournment.

558 Present: Messrs. Tucker, Butterfield, Birney, Edwards and Moyers.

P. EDWIN DYE having first been duly sworn testifies as follows:

By Mr. BIRNEY:

Q. You have already testified in this case before the examiner, that you have had long experience in the prosecution of cases under the Bowman act? A. Yes sir.

Q. And have prosecuted a great many such cases? A. Yes sir.

Q. And in the course of such prosecution you have met the expenses &c.? A. Yes sir.

Q. Are you able to say from your experience with the cases under the Bowman act, what was a fair average of expense attending the prosecution of such cases?

Mr. Tucker objects and the objection is sustained.

Q. Have you, at the request of the defendants, examined the records of the Court of Claims in a number of cases indicated to you by him, for the purpose of obtaining the amount of expense that would fairly attend the prosecution of those particular cases? A. I have.

Q. Have you a memorandum of those cases? A. Yes sir.

Q. Please produce it.

Witness produces a memorandum.

Q. What does this list show? A. It is a list of cases I ex-
559 amined in the Court of Claims that are pending while the labor and expense has been properly performed. That list of cases was furnished to me by Col. Moyers or under his direction. I took the list and examined the cases and caused to be written down for me at the time the number of the case and what I judged the expenses were in the case, what I would have expended in each case.

Q. This paper which I have, is headed "Cases pending in the Court of Claims" is in several columns. Will you explain the meaning of these several columns?

Mr. Tucker objects.

A. The right hand column represents the Congressional number of the case I examined; the column marked dollars indicates what I considered, on examination of the case, was the reasonable expenses in that case; the next column, the third from the right, represents the class and entries in the books of Col. Moyers, such as D, E. &c.

Q. His dockets you mean? A. Yes sir.

Q. How did you conduct your examination of these cases? A. I had a party to write under my directions a-d I examined in the Court of Claims to see what had been done.

Q. Did that examination, in your opinion as a practitioner before the Court of Claims, enable you to ascertain the fair expense attending the prosecution of these claims? A. I think so. I caused it to be reduced to writing.

560 Q. You had it reduced to writing? A. Yes sir.

Q. And does this paper indicate your opinion in that respect as to the cost of these cases? A. That was the intention of it I believe it is correct.

Mr. Birney offers the paper in evidence.

Mr. Tucker objects.

The auditor sustains the objection.

Mr. Birney notes an exception.

The paper is filed as an exhibit and not as evidence, and is marked Exhibit G. M. May 29/01–1.

—— HEALY having been recalled by Mr. Birney testifies as follows,

By Mr. BIRNEY:

Q. You have already testified in this case before the examiner? A. Yes sir.

Q. You were in Col. Moyers' employ between what dates, can you recall? A. I think from way back in 1873 or 1874 up to 1889 or 1890.

Q. You knew Mr. George B. Edmonds? A. Yes sir.

Q. I show you now docket H of the dockets of Col. Moyers as heretofore identified in this cause, and ask you if you have looked over that, at the request of Col. Moyers, within the last day or two, and examined the handwriting in the margins and the entries?

561 A. Yes sir, a couple of hours ago.

Q. In whose handwriting are the marginal entries of attorneys' names in that docket? A. Mine, in fact almost all the writing with few exceptions is mine. The docket and the first entry in the book are mine and the entries on the margin.

Q. Please tell me if you recall the person who gave you the information, and the circumstances of that information, from which you entered the attorneys' names in the docket in those cases? A. Well, of course in the case in which these cases apply to Mr. Edmonds it was Mr. Edmonds. In all cases which I entered upon the dockets he was present when the case was entered and given credit.

Q. What did he have before him at the time of giving you this information? A. He had a list of cases that was the only record I had to go by.

Q. Did he have upon that list, do you recollect any case which under the practice of attorneys before the Court of Claims did not properly belong to him? *Q.* That is a far reaching question.

Q. So far as you know? A. He had — all other cases in which the names of other attorneys were on the blanks.

Q. Did you have any conversation with him on that subject? A. Yes sir, lots of times.

Q. With what results so far as entering his name on the dockets was concerned? *Q.* So far as that is concerned I think in

562 all cases which I thought were Moyers, Taylor or McAllister cases I always objected to entering on the dockets as Moyers & Edmonds cases.

Q. What are the initials "M. & E." on this claim? (Referring to a claim in the docket.) A. Moyers and Edmonds, I think.

Q. At the time of these entries by you was Mr. George B. Edmonds present, the entries of names or initials of attorneys? A. Yes sir, he had his list there and was present.

Q. There are a number of cases entered here in which the name of George Taylor appears alone on the margin as attorney. What did Col. Moyers have to do with those cases? A. Mr. Taylor had turned his cases over to Col. Moyers, he was in the office every day.

Q. He was associated with Col. Moyers? A. Yes, sir.

Q. Did any other persons make docket entries up to the time you left the employ of Col. Moyers? A. Do you mean on these dockets?

Q. Yes. A. There are different handwritings there, but no difference in the docket entries, the entries of names on the margin are mine.

Q. Have you examined docket I in the same way? A. Yes, sir, that is my handwriting, all the entries are mine.

563 Q. Were those entries of names of attorneys made in the same way you have mentioned as to docket H? A. Yes sir, whenever Mr. Edmonds claimed a case I of course gave him credit.

Q. And that—was indicated by writing his name of initials on the margin? A. Yes, sir, right there at the top M. & E.

Q. I show you docket D. Are the first entries in that docket in your handwriting. I direct your attention to the first entries of names of the cases and the initials indicating the attorneys? A. Those are all in my handwriting.

Q. How is it with dockets E and L? A. I recognize my handwriting all through this docket, in the entries of the cases.

Q. And the names of the attorneys? A. Yes sir.

Q. Now in docket L I show you entries on pages 210 and 211, and ask you if the first entries, title of case, number of cases &c. are in your handwriting? A. No, sir.

At this point the hearing is adjourned to June 3d. at 10.30 a. m.

MONDAY, *June 3d*, 1901—10.30 a. m.

Hearing pursuant to adjournment.

Present: Mr. Tucker, Mr. Birney, Mr. Edwards and Col. Moyers.

WILLIAM W. JACKSON, having first been duly sworn, testifies as follows:

By Mr. BIRNEY:

Q. Please state your occupation? A. I am at present engaged in newspaper employ.

564 Q. What was your business in the early years after 1880? A. I was a claim agent before the departments and Congress.

Q. Did you know the case of R. M. Johnson, administra-

tor of Samuel Herd? A. Yes sir, a claim agent against the Government.

Q. What connection had you with that case? A. Sent to me by T. B. Johnson, Hillsboro, Scott county Mississippi.

Q. Is that the same case for which an appropriation of $2,105 was made under the appropriation act of 1899? A. I think so.

Q. Do you know in what way Col. Moyers became interested in that case? A. I turned the case over to him.

Q. For what purpose? A. For collection.

Q. You mean prosecution? A. Yes sir.

Q. Did you prosecute it in the Court of Claims? A. No sir, Col. Moyers did.

Q. About what time did you turn this case over to Col. Moyers? A. Between 1880 and 1882.

Q. Did you know Mr. George B. Edmonds? A. No sir.

Q. To your knowledge had George B. Edmonds any relations to that case as attorney? A. I know nothing of him.

Q. What relation to the estate of Heard did T. B. Johnson
565 bear? A. I don't know, unless as attorney, the case was put in his hands by the parties there and sent to me.

Cross-examination.

By Mr. TUCKER:

Q. Please state definitely what case you refer to in your direct examination? A. The name of the claimant is Samuel Heard, the date of the appropriation I don't recollect, nor the amount of it.

Q. Did you get any money out of it? A. No sir.

Q. Who got the money? A. I suppose Col. Moyers.

Q. How did he come to get it? A. I couldn't tell you, I suppose through an appropriation. I turned the case over to him and have had no connection with it since.

Q. What, if anything, did Mr. Johnson have to do with that case? A. He was the attorney for the party at Hillsboro.

Q. What is his name? A. T. B. Johnson.

Q. Did you have a contract with the claimants in this case for a fee. A. With the attorney?

Q. Did you have a contract? A. Yes, sir.

566 Q. What did you do with that contract? A. I turned it over to Col. Moyers and I suppose he obtained another contract after I turned it over.

JOHN C. SCOTT having first been duly sworn testifies as follows.

By Mr. BIRNEY:

Q. You have heretofore testified in this case before the examiner? A. Yes, sir.

Q. Do you know Mr. Healy, the witness partially examined? A. Very well.

Q. During his employment by Col. Moyers were you also employed by him? A. Yes sir.

Q. You knew Mr. George B. Edmonds? A. Yes sir.

Q. Are you familiar with the handwriting of Mr. Healy? A. Yes sir.

Q. I will ask you to look at the entries in docket D produced by Col. Moyers, and say in whose handwriting the entries prior to 1891 are made? A. The cases as they are docketed at the top of the page, name, place and number are in Tom Healy's handwriting; the other entries are in a different handwriting.

Q. Have you looked through the docket? A. Yes sir.

567 Q. That is all in Mr. Healy's handwriting? A. Yes sir.

Q. Were you ever present at the making of any entries in this book of the persons whose names appear here as attorneys by Mr. Healy when Mr. Edmonds was present? A. Yes sir.

Q. State how, when Mr. Edmonds was present, the entries were made? A. I was there, and Mr. Healy's and my desk adjoin.

Q. Do you mean side by side? A. Yes sir, Mr. Edmonds came in with a list and had Healy enter the cases from that list that Edmonds had, and I know that Healy went over them, whenever he would find one that Col. Moyers was interested in before, or got from some other attorney, that he always scratched that off and would not enter it.

Q. Was Col. Moyers present at the time when that was done? A. He was, at different times.

Q. You speak now of one occasion, was it more than once that this happened? A. He was there two or three different times.

Q. For this purpose? A. Yes sir, while that work was going on.

Q. Were you ever present when any objection was made to Mr. Edmonds by Mr. Moyers, concerning these entries of attorneys' names—of his name as attorney in these cases? A. In ref-

568 erence to two or three cases he objected to their being entered in Mr. Edmonds' name as it was already Col. Moyers' case.

Q. At the time of the making of these objections by Col. Moyers had the entry been made in the book? A. I think it had.

Q. Do you know of any particular case? A. I cannot recall any particular case now, but could find out by going through the books carefully.

—. When you say the name was scratched off, do you mean it was scratched off the book or the Edmonds list? A. Both.

Q. Who scratched it off? A. I scratched one myself, and I know Healy did the same.

Q. Was that done in Mr. Edmonds' presence? A. Yes sir, all this work was done in Mr. Edmonds' presence.

569 Cross examination.

By Mr. TUCKER:

Q. You have stated that all this work was done in Mr. Edmonds' presence. Please state specifically what work you refer to? A. Entering these cases.

Q. In the different dockets? A. Yes, sir all of them in which the entries aopear.

Q. Specify them? A. Dockets D, E, some in G and H.

Q. You mean to say that in making the entries in all the dockets you have just mentioned Mr. Edmonds was present? A. I do. That is I mean to say this, I don't mean to say all the entries in the dockets. I mean all the entries in the dockets of the cases in which Mr. Edmonds appears as attorney.

Q. How do you know that? A. He was there with the list.

Q. You personally recollect seeing Mr. Healy make all of the several hundred entries and personally recollect that when Mr. Healy made those entries Mr. Edmonds was present? A. I will not say that I saw Mr. Healy make each and every one but I do know that Mr. Healy entered all the cases, and know his handwriting, and knew Mr. Edmonds was there. Mr. Edmonds was present. I cannot recollect personally his making every entry as some may
570 have been made during my absence.

Q. Can you tell us which of the cases Mr. Healy made the entries of, when Mr. Edmonds was present? A. No, sir. I could not possibly do that, I could not give the specific names of the cases which Mr. Healy entered.

Q. Do you recollect in which cases Col. Moyers made his objection that Mr. Edmonds should not be entered as joint attorney with him? A. I cannot recollect just that case, the one I refer to as having been scratched off I can, I have recalled your attention to one other.

Q. My question relates to cases when Col. Moyers was present personally and objected to Mr. Edmonds' name being entered? A. No, I cannot recollect another case.

Q. When Mr. Edmonds was present? A. I cannot tell you that.

Q. During what years was Mr. Edmonds present in the office overhauling the entry of these cases? A. 1887, 1888, and 1889, several years.

Q. In 1887 how many cases would you say Mr. Edmonds' name was entered in these dockets? A. That I could not say unless I went over them and counted them.

Q. You say you struck off the entry of attorney's name in one case? A. I know of one case I struck it off.

Q. Can you recollectwhat case that is? A. I could not.

571 Q. How did you strike it off? A. With an ink eraser.

Q. Was Mr. Edmonds present? A. Yes, sir.

Q. Was Col. Moyers present? A. I could not say, it was done under his direction.

Q. You say there are several cases in which Mr. Healy struck off the attorney's names? A. I could not say.

Q. When those two or three entries were stricken off were Moyers and Edmonds present? A. Yes, sir, all that work was done under Col. Moyers' directions.

Q. How was that scratching off done by Mr. Healy? A. I could not say whether with an ink eraser or how, I know it was done by Col. Moyers' direction.

Q. What is your business? A. At present I am a stenographer.

Q. For whom? A. For myself.

Q. Where is your office? A. 604 F street, I have desk room there.

Q. When you testified in this case before you were a letter carrier were you not? A. Yes, sir.

Q. Since you testified before in this case have you received any sums of money from Col. Moyers? A. Yes sir, for some
572 work I have done for him.

Q. You have been employed by him since then? A. Yes sir, in several matters.

Q. Will you turn to those dockets, in the case of Susan Merrill? A. Yes, sir, if you can get the index.

Q. Are you familiar with Mr. George B. Edmonds' handwriting? A. Yes sir.

Q. You have seen him write? A. Yes, sir.

Q. Please look at the paper or letter, and tell me if it is in his handwriting and whether that endorsement on the bottom of it in pencil is in Col. Moyers' handwriting?

(Hands witness letter.)

A. Yes, sir, that is Mr. Edmonds' handwriting and the endorsement is in Col. Moyers' handwriting.

The letter is offered for identification and marked G. M. June 3/01.

Mr. Birney asks that the testimony of Mr. Jackson be stricken from the record of this hearing.

Mr. Tucker objects to striking out the testimony.

Re-direct-examination.

By Mr. BIRNEY:

Q. You are familiar with the case of Susan Heard to which
573 Mr. Jackson testified? A. I am familiar with the docket entries.

Q. I show you the docket entries on page 45 of docket D. Under what name and number was that case prosecuted before the Court of Claims? A. It was originally entered under the name of Samuel Heard, No. 1767 Congressional and the side note there shows that it was entered afterwards.

Q. Whose names appear upon the docket as attorneys? A. T. B. Johnson and Condit Jackson.

Q. Does the name of R. M. or Richard Johnson appear in any way in that case? A. No, sir.

By Mr. TUCKER:

Q. As I understand you, Mr. Edmonds in 1887, 1888 and 1889, was in the habit of supervising the entries by Mr. Healy in these dockets you have referred to? A. In all of those entries Mr. Edmonds was present with his list.

Q. Mr. Edmonds had the list in his hands and supervised Mr. Healy when he made these entries in 1887, 1888 and 1889? A. I don't know whether you would call it supervising, he was there when they were entered.

Q. Do you know why Mr. Edmonds was there in order to see these entries made in the dockets? A. I do not know what his reasons were except he wanted to come and be there when the entries were made, I never heard of anything outside of that.

574 Q. Col. Moyers and Mr. Edmonds would be there when Mr. Healy was making the entries and on some occasions Col. Moyers would protest that Mr. Edmonds was not a co-attorney in the case? A. Yes, sir, that it did not belong to Mr. Edmonds because he had had it long before.

Q. You have testified in this case before? A. Yes, sir.

Q. I read from what purports to be a transcript of your testimony given before the examiner in the court bill on February 15th, 1900, and ask you if you so testified.

"Q. You say you saw Mr. George B. Edmonds in Col. Moyers' office almost daily?" "A. Yes, sir."

"Q. When was that, between what dates?" "A. March, 1889 to 1892, about the summer of 1892."

—. Did you so testify? A. I did.

Q. What do you hold in your hand? A. A copy of my testimony from which you are reading.

Q. Did you testify on that occasion as follows:

"Q. Do you know what brought Mr. Edmonds to Col. Moyers' office?" "A. Yes, sir."

"Q. What was it?" "A. To get money."

"Q. And for no other purpose?" "A. No sir."

575 "Q. Don't you know as a matter of fact that Col. Moyers and Mr. Edmonds were engaged together in the prosecution of claims before the Government?" "A. Together?"

"Q. Yes." "A. No, sir, Mr. Edmonds disposed of his claims to Col. Moyers."

"Q. Who drew up this agreement of 1888, you?" "A. Yes, sir, I am satisfied that I did."

"Q. Don't you know that from 1888 until 1892 Col. Moyers and Mr. Edmonds were engaged in the prosecution of claims together?" "A. No, sir. Disposition had been made of the claims by Mr. Ed-

monds to Col. Moyers in 1888, and Mr. Edmonds would draw money from the Colonel under that disposition."

"Q. You knew they were partners in the prosecution of those claims between 1888 and 1892?" "A. Not in partnership to my knowledge."

—. Did you so testify? A. I did.

Q. I show you the entries on page 274 of docket C, in the case of Susan Merrill of Lee county, Mississippi and ask you who made the entries, if you know, there shown? A. The entry of the case, name, county and number is in Mr. Healy's handwriting, the entry of March 31st, 1887, the next one April 19th, 1887—well I will say, with two or three exceptions the most of the case is entered in Healy's handwriting.

576 Mr. Tucker offers in evidence the page of the docket just referred to, relating to the case of Susan Merrill, and which docket was produced by the defendant.

Mr. Tucker also offers in evidence the paper heretofore produced and marked for identification as "G. M. June 3/01," being a letter written by Mr. George B. Edmonds and containing the endorsement of the defendant, Gilbert Moyers.

By Mr. BIRNEY:

Q. Did you have any personal knowledge of the attorneys who were engaged in the prosecution of the Susan Merrill case to which your attention has been called? A. I know Mr. Francis had another case, I could not say it was the Susan Merrill case.

Q. Who was Mr. Francis? A. An attorney who came into Col. Moyers' office and had several cases there, his name will be found on the marginal notes.

Q. Are you able to say whether the Merrill case in which Mr. Francis was interested was the same? A. No, sir.

By Mr. TUCKER:

Q. Where the name of the attorney does not appear in the upper left hand corner of the page on which entries of cases are made in those dockets, is the case an individual one of Col. Moyers? A. Yes, sir.

Q. Is that the invariable rule? A. Yes, sir, where another attorney had nothing to do with it there is no name, but where another attorney was associated in the case his name appears on the margin.

577 Q. Then if Mr. Edmonds had anything to do with the Moyers cases his name would appear on the margin of the docket entries? A. Yes, sir.

Q. So then, Mr. Francis would not appear unless he were interested in the case? A. His name should appear there.

The hearing is then adjourned to Tuesday, June 4th, 1901, at 10.30 o'clock a. m.

WEDNESDAY, *June* 5, 1901—10.30 a. m.

Hearing pursuant to adjournment.
Present: Messrs. Tucker, Birney, Edwards, and Colonel Moyers.

THOMAS HEALY, recalled for cross-examination.

By Mr. TUCKER:

Q. Do I understand that you have examined all of the entries in these various dockets of Colonel Moyers and that the first entries were in your handwriting? A. I have not examined them all.

Q. Tell us which ones you have examined. A. You mean take the book?

Q. Yes; take the dockets, which are the dockets you have examined. A. I have not gone through all of them at all.

Q. What do you mean, to testify that the ones only that
578 you have looked at are in your handwriting? A. Yes, sir.

Q. How many are in your handwriting? A. I could not say until I look. That is mine. (Indicating an entry in one of the dockets.)

Q. State as nearly as you can how many of the cases in these various dockets you have examined and that are in your handwriting? A. I could not state that, only the ones I have examined.

Q. What have you done? A. I have done nothing only what I did last week.

Q. When did you leave Colonel Moyers' employ? A. I think it was some time in 1892.

Q. When did you enter his employ? A. I think some time in 1873 or 1874 first, when he was quartermaster.

Q. When did you first make Mr. Edmonds' acquaintance? A. Somewhere about '86 or '87.

Q. When did you first begin to enter the names of Moyers and Edmonds on these dockets? A. I think the docket will show, I cannot state definitely; whenever I would have a case from the court I would give credit to Edmonds or whosever case it was.

Q. Well, the entry in "M. & E.," or in "Moyers & Edmonds" does not bear date in these dockets. What I want to know is when you began making these entries of "M. & E." or "Moyers & Edmonds?" A. I would make, that you see there (pointing to initials "M. & E." on an entry in docket) and either put in "M. & E." or whosever case it was.

579 Q. When did you begin these? A. Whenever he would bring cases to the office.

Q. When was that? A. Probably '86 or '87 or '88.

Q. Would Colonel Moyers be present when you were making these entries, that you have spoken of in the docket? A. Not always.

Q. Was he ever present? A. He would be in his room.

Q. Did any dispute ever arise as to whose case it was, whether his or Mr. Edmonds? A. I do not know about; there might.

Q. When Mr. Edmonds said a case was his did you always give credit? A. Yes, sir.

Q. You took his word? A. Yes, he always had a list or memorandum.

Q. What sort of a list? A. A sheet of legal cap with names and numbers. He would come down and ask me if I had a certain case on the books and I would look it up and if I did not have it I would enter the case and put the initials "M. & E." on the book.

Q. And unless he mentioned it to you you would not enter his name on the docket in a given case? A. No.

Q. He was not present when you made the entries in all these cases? A. In some he was.

580 Q. I mean all. A. When I had entered the names he would come in and ask me if it was on the docket.

Q. I mean was he present when you were making these entries in the dockets? A. He was there every day.

Q. During what years? A. From '86 or '87 up to probably '90.

Q. Now, I call your attention to docket D, page 135, and to the entries in the case of Fitzhugh and ask you who made the first entries in that case, and who wrote the name of Edmonds in the left-hand margin of the page? A. A clerk by the name of Brandenburg.

Q. So you know nothing whatever about the attorneyship in that case? A. No, sir.

Q. Is the same true of the entries in the Goodlow case on page 134 of the same docket? A. Yes, sir.

Q. And the case of Roane on page 138 of the same docket? A. The same.

Q. And on page 169, the Clarke case on the same docket? A. That looks like the same writing.

Q. So that in all the cases I have mentioned you did not make the entry of the attorney's name on the margin? A. It does not show there.

Q. That was — my question? A. No, sir.

581 Q. Please look at docket G and examine the entries in the cases in that docket and state whether the title of the several cases is in your handwriting? A. Yes, sir.

Q. How do you account for the fact that in that docket there are the names of no Washington associated counsel endorsed in the margin, if it be a fact? A. Well, I imagine that is in this way, that cases, or powers of attorney, would come direct from the claimant where we would write to them.

Q. Now, I call your attention to page 238 of docket K, containing entries in the case of William T. Fauber, and ask you whether the caption of that case and the entries and the attorneys' names are in your handwriting? A. Yes sir, that entry is.

Q. Are you acquainted with Mr. Edmonds' handwriting? A. I have seen a good deal of it.

Q. Have you ever seen him write? A. Yes sir; in the office.

Q. Please look at the paper I hand you and state whether the handwriting in the body of that paper is that of Mr. Edmonds?

(Paper handed to witness is paper marked for identification G. M. June 6, 1901.)

A. I am not expert enough to say.

Q. I ask your attention to page 274 of docket C, containing names in the case of Susan Merrill, and ask you whether you wrote the caption of that case and made the first entries? A. Yes, sir.

582 Q. Why did you not put Mr. Edmonds as associate attorney in that case? A. Because Mr. Francis was attorney in that case.

Q. How do you know that? A. I knew him well; he was in the office every day about it.

Q. Mr. Edmonds never asked you to put his name up in the corner of that page? A. No, sir, because I would not have done it.

Q. Then I understand you that you exercised the right of determining whether Mr. Edmonds was associated with Colonel Moyers in these cases, and if he was not associated with Colonel Moyers you refused to put his name on the docket? A. I had no authority to do that; I was simply a clerk.

Re-direct-examination.

By Mr. BIRNEY:

Q. Among the docket entries in this case of Susan Merrill appears an entry under date of April 14, 1887, the second and third entry after the caption, it reads "Petition and P. A. and F. A. to Philo, Mississippi;" what does that mean? A. That "P. A." is power of attorney, and the "F. A." means fee agreement, and it means that the petition was sent to the claimant, as also the fee agreement.

Q. By whom? A. By Mr. Francis.

583 By Mr. TUCKER:

Q. I hand you a fee agreement between Susan Merrill and George B. Edmonds dated April 20, 1886, and ask you to look at the handwriting on the first two lines of that contract and state whose handwriting that is. A. I could not say.

Mr. Tucker offers the paper for identification and it is marked G. M., June 6th, '01, 1.

Q. How many Washington attorneys would you say that Col. Moyers was associated with in the prosecution of this class of claims? A. I can give you some names—there was George Taylor, Mr. McAlister and D. G. Glassie, B. D. Hine now dead, and also Charles C. Tucker, your father.

Q. Do you recollect anybody else? A. I have forgotten.

Q. How about J. B. Semptor? A. He was a Tennessee man.

Q. How about McPherson? A. Yes, he was another one.

Q. How about General Denver? A. Yes, Arthur St. Clair Denver, I think the firm was Peck & Denver. They are all dead.

Q. Do you recollect any other names? A. Justin I. McCarthy; I do not recollect whether he was connected with these Southern claims or not.

By Mr. BIRNEY:

Q. I now show you the entries in the case of Henry T. Cate, Nos. 4931 and 6966 Congressional, page 6 of docket F, and ask you who entered the caption of that? A. I did.

584 Q. Is the name of any associate counsel entered there? A. No, sir.

Q. I show you now the docket entries on page 84 of docket F in the case of James C. Tappan, administrator of Thomas Sutton; in whose handwriting are the entries of the caption and the first four entries below it? A. Mine.

Q. Does it show from whom the case was received? A. Received from Mrs. J. A. Sutton.

Q. Is there anything to indicate associate counsel? A. Nothing, that I can see there; I do not remember.

Q. I show you now the entries in the case of Richard Butler, Chatham county, Georgia, docket H, page 59, and ask you who made the entries in this case? A. That is my handwriting.

Q. Any associate counsel there? A. Yes sir, Moyers and Edmonds.

Q. Is that in your handwriting? A. Yes, sir.

Q. It indicates that Moyers & Edmonds were associated in that case? A. Yes, sir.

Q. Now, in the case of John P. Davidson, No. 6809 Congressional, page 20, docket H; in whose handwriting is that? A. That is my handwriting.

Q. What appears upon the margin as to counsel? A. Moyers & Edmonds.

585 Q. Is it in your handwriting? A. Yes, sir.

Q. Is that entry obliterated or marked in any way? A. It appears to be rubbed over in pencil.

Q. I show you the entries in the case of Christain Uble, docket E, page 224, and ask you in whose handwriting are the first entries? A. Mine.

Q. Is the entry on the margin in your handwriting? A. Yes, sir; it shows the name of Moyers & Edmonds attorney-.

Q. Is there any entry upon that book in Colonel Moyers' handwriting? A. Yes, sir.

Q. What is it? A. "Settled. William P. Clark, attorney."

Mr. Tucker objects to these entries generally upon the ground that

they are declarations with nothing to show that they were made at the time they purport to have been made, and they are not books of account such as would be admissible in evidence ordinarily. So far as the entries are admissions upon the part of the defendants there is no objection.

Q. Who made the entries in the case of William R. Welborn, docket H, page 187? A. That is my writing.

Q. And the entry on the margin, "M. & E." is your handwriting?

A. Yes, sir.

586 Q. Who made the caption entries in the case of Caspar Gall, docket H, page 38? A. Mine.

Q. Is the marginal entry, "M. & E." in your handwriting? A. Yes, sir.

Q. Who made the entries in the case of John Ehs, docket C, page 2? A. Mine.

Q. Do the names of any associate counsel appear there? A. No, sir.

Q. Now, docket D, page 45, who made the caption in the case of Heard *vs.* United States, in which R. M. Johnson appears afterwards to have been entered as administrator? A. That is not my handwriting; no, sir.

Q. Do you know whose it is? A. It looks very much like Scott's; but I am not certain.

Q. Now docket G, page 93, in whose handwriting are the entries in the case of Anna Hunt, administratrix of G. F. Hunt? A. That is my handwriting?

Q. Does the name of any associate counsel appear in that case? A. No, sir.

Q. Now docket K, page 167, who made the caption entries in the case of Hattie E. Black now Ladd? A. That is my writing.

587 Q. Does the name of any associate counsel appear there?

A. No sir.

Q. Who made the caption entries in the case of James Harding, administrator *d. b. n.*, docket H, page 290. A. Mine.

Q. Does the name of any associate counsel appear there? A. No, sir.

Q. Who made the caption entries in the case of William Williams, administrator of Roderick Williams, docket E, page 136? A. Mine.

Q. Does the name of any associate counsel appear there? A. It does not appear.

Q. Who made the caption entries in the case of Nathaniel Thornton, docket H, page 116? A. Mine.

Q. The initials "M. & E." in the margin are in your handwriting? A. Yes sir.

Q. In whose handwriting are the caption entries in the case of Samuel Fitzhugh, docket D, page 135. A. Not mine; that looks like Brandenburg's handwriting.

Q. Is the name of associate counsel entered? A. Yes sir; in the same handwriting.

Q. Whose name is it? A. Mr. Edmonds.

588 Q. Now, docket I, page 247, who made the caption entries in the case of John A. Hornbaker? A. That is my writing.

Q. Is there the name of any associate counsel entered there? A. I do not see any.

By Mr. TUCKER:

Q. In the case of Cate, docket F, page 86, the first entry is "July 10, 1888, referred to Court of Claims," does that mean that that was the first step taken by Colonel Moyers' office in that case? A. No, sir.

Q. What does it mean? A. It means the date it was entered at the Court of Claims. The first step was generally before Congress; that is the date the Committee on War Claims referred it to the court.

Q. In the case of Tappan, docket F, page 84, the first marginal entry is Mrs. J. Sutton, Scott county, Arkansas; she was the person with whom correspondence was had? A. Yes, sir.

Q. Will you read the entries in the Uble case in docket E, Charles Uble, page 24, docket E. A. (Witness reads pencil entry.)

By Mr. BIRNEY:

Q. In whose handwriting are the caption entries in the case of Samuel Bagnall, administrator &c. of Braboy, docket H, page 257?

A. My handwriting.

589 Q. Is there any entry of associate counsel? A. Not that I see.

By Mr. TUCKER:

Q. In these cases where Mr. Edmonds does not appear in the margin I generally understand you as testifying that you recollect that when you made the entries in those cases Mr. Edmonds was present? A. The marginal entries you mean?

Q. When you made any entries? A. He was present when I made the marginal entries.

Q. That is not the question. When you made the entries in the case where there is no marginal entry of attorneys or where Mr. Edmonds' name does not appear as attorney can you testify of your own recollection that Mr. Edmonds was present? A. Only in cases in which I made an entry of "M. & E."

Q. In the other cases you do not know whether Mr. Edmonds was present or not? A. I made those entries from the Court of Claims.

Q. That is not my question. A. He might have been; I do not know.

Q. What do you mean by saying you made these entries from the Court of Claims? A. The clerk of the court would send a list

down there of numbers and no names and I would go up with the list of the cases with the numbers and get the names; then I would come back to the office and go over our book and enter the cases in the docket as at the Court of Claims. That is all I could do
590 then, and when Mr. Edmonds came in he usually had a list and would ask me if a certain case was down there and I would look on my Congressional book and see where it was referred, and then look on my office book.

Q. Take, for illustration, this case of Samuel Bagnall, the first entry? A. Yes, sir.

Q. Do you know whether Mr. Edmonds was in the office when you made the entry? A. He was if I gave him any credit.

Q. As a matter of fact, did you not get the information from which you had made the entries in these dockets largely from the dockets and entries in the Court of Claims? A. I had to get the names.

Q. It is simply a copy of the entries in the Court of Claims? A. The object was to get from the court number of the case and the name.

Q. Was it not your object to make the entries in the cases correspond with the entries in the dockets of the Court of Claims? A. No, sir; what they did up there had nothing to do with what transpired in our office.

By Mr. BIRNEY:

Q. Those entries were made in the regular course of the business of your office? A. Yes, sir.

Mr. Tucker offers in evidence the court papers just produced in the case of Susan Merrill, 1681 Congressional.

591 GILBERT MOYERS, recalled.

By Mr. BIRNEY:

Q. I show you the caption entries in the case of John P. Davidson, docket H, page 20, in which the attorneys' names Moyers & Edmonds on the margin appear to be scratched through. Tell us what you know of it? A. I made that erasure for the reason that it was not a case received from Mr. Edmonds and it was entered by Healey by mistake under the direction of Mr. Edmonds, as I erased in several other cases as you will find in the dockets.

Q. When did you do that? A. Some time since; I cannot give the exact date.

Mr. Tucker moves to strike out all testimony relating to these docket entries upon the ground that defendant offers them first, to show by marginal entries that Mr. Edmonds' name failed to appear as attorney on the dockets, and then, when the name does appear, he undertakes to strike off the name of Edmonds from his dockets

and to explain that his clerk made a mistake in entering them; and also on the ground that the entries not being entries in books of account are inadmissible except where they show determinations.

Hearing adjourned until Monday, June 10, 1901, 10.30 a. m.

592 FRIDAY, *June* 14, 1901—2 p. m.

Hearing pursuant to adjournment.

Present: Messrs. Tucker, Birney and Col. Moyers.

HORACE S. CUMMINGS, recalled.

By Mr. TUCKER:

Q. You have heretofore testified, I believe, that you had in your custody at the time of Mr. Edmonds' death and have had since his papers and effects? A. I have.

Q. I hand you three papers, one of which has heretofore been identified and marked "G. M. June 3, 1901" purporting to be a letter from Mr. Edmonds to Gilbert Moyers, and containing an endorsement in pencil signed "G. M.;" the other two of which purport respectively, to be a fee agreement between Susan S. Merrill and George B. Edmonds, dated April 20, 1886, and a paper headed "Court of Claims of the U. S. A., Susan A. Merrill *vs.* The United States, Cong. case No. 1681," unsigned, and ask whether you have seen those three papers before?

(Handing witness papers.)

A. I have seen these three papers.

Q. Were they in your custody? A. They have been in my custody ever since the death of George B. Edmonds; I found these among other papers in his trunk.

Q. They are in the handwriting of George B. Edmonds, the two letters? A. I believe one is a letter and the other is some
593 sort of an agreement.

Q. I mean the two written out; I do not mean the blank form? A. Yes, sir.

Q. Are you familiar with George B. Edmonds' handwriting? A. Perfectly.

Q. Had you ever seen him write in his lifetime? A. Many times.

Q. Those two papers you have just referred to are in his handwriting? A. They are.

Q. In whose handwriting is the body of that contract, if you know? A. George B. Edmonds; the body of the printed contract.

By Mr. BIRNEY:

Q. Which paper is that you refer to? A. The contract.

By Mr. TUCKER:

Q. Referring to the contract, in whose handwriting is the body of the printed contract? A. The power of attorney I should judge to

be in George B. Edmonds' handwriting, but I am not absolutely positive about that. That is this one (handing paper to Mr. Birney).

By Mr. BIRNEY:

Q. These three papers all purport to relate to the case of Susan S. Merrill? A. They do.

594 Mr. TUCKER: I offer these three papers in evidence.

Mr. BIRNEY: I object to the fee agreement so called and to the unsigned paper offered as the third of the three papers, headed "Court of Claims, U. S. A.," as incompetent and not proven.

Mr. TUCKER: I think these papers are admissible as having been found in the effects of the deceased by his administrator.

By Mr. TUCKER:

Q. Mr. Cummings, look at the memorandum on the back of this letter (H. A. C. No. 1) which reads "Rec'd this back from clerk in Moyers' office Saturday, July 18, 1891," and state in whose handwriting that is? (Handing witness paper.) A. George B. Edmonds.

Mr. TUCKER: I offer these three papers in evidence.

Mr. BIRNEY: I object to the last named endorsement for any purpose.

Mr. TUCKER: You do not object to the will?

Mr. BIRNEY: I do not object to the will.

By Mr. TUCKER:

Q. Mr. Cummings, please state, if you please, whether these three papers just referred to were found by you amongst Mr. Edmonds' papers together or separately.

Mr. Birney objects to the question as leading.

Objection overruled.

595 A. I found these papers, the three of them, folded so, (indicating the papers inclosed in each other); in that shape.

Mr. BIRNEY: I object.

The objection is overruled.

Q. I hand you, Mr. Cummings, a paper purporting to be a letter dated Huntley, September 29, '96, addressed to Mr. G. B. Edmonds and signed Anna Hunt, and ask you whether you have ever seen that paper before and whether it was in your custody, and if so how came you in possession of it? A. I found this letter among the letters of Mr. George B. Edmonds in the trunk which contained all his papers.

Mr. TUCKER: I offer this paper in evidence.

Mr. BIRNEY: I object to it as an absolutely unproved paper.

Mr. TUCKER: I offer this paper in evidence to show that such a paper was in the possession of George B. Edmonds at the time of his death; that is the sole purpose of the offer.

Mr. BIRNEY: I object to that offer.
The objection is overruled.
Said paper filed and marked "H. A. C. No. 4."

By Mr. TUCKER:

Q. Mr. Cummings, I direct your attention to a large number of jackets on the table before you and ask you whether you ever saw those jackets before, and if so under what circumstances? A. I found those papers in the condition they are now, with the additional ones which have been introduced in this case, in the
596 trunk of Mr. George B. Edmonds together with the schedule, and the books of account that he kept. I took each jacket and compared the contents with the schedule. I also compared them with the book of entry or accounts where he kept a description of the claims.

Mr. BIRNEY: I object to that as not responsive to the question.
The AUDITOR: That is not responsive to the question.
Mr. TUCKER: I would have asked another question to have brought that out; it was only simply to save time.
Mr. TUCKER: I offer the papers just referred to by the witness in evidence (being a large number of jackets).
Mr. BIRNEY: I object to them as not proven sufficiently to be offered in evidence for any purpose.

By Mr. TUCKER:

Q. I might ask the additional question, in whose handwriting are the endorsements on those jackets? A. George B. Edmonds'.

The AUDITOR: The papers can be filed and their value determined later.

By Mr. TUCKER:

Q. I have before me the Court of Claims files in the case of William T. Fauber, I take therefrom and hand to you, what purports to be a petition addressed to the Senate and House of Representatives by William T. Fauber asking that his claim against the United States be referred to the Court of Claims, which peti-
597 tion appears by file mark to have been filed June 29, '86. I ask you to look at the written matter on the face of that petition other than the signature and state in whose handwriting that matter is? (Handing witness paper.) A. That is in the handwriting of George B. Edmonds.

Mr. TUCKER: It is agreed by and between counsel for the respective parties that a copy of the paper just offered in evidence shall be filed and used in lieu of the original.
Said paper previously marked "G. M. June 6, '01" for identification.

Q. I have before me the Court of Claims files in the case of Henry

T. Cate against The United States and take therefrom the petition of the claimant Henry T. Cate, filed February 13, 1888, in the Court of Claims, and ask you to examine the face of that petition, and to state in whose handwriting, if you know, the written matter is? (Handing witness paper.) That is, with the exception of the signature of the claimant. A. It is in the handwriting of George B. Edmonds.

Mr. TUCKER: I offer in evidence the paper just identified by the witness, with the same stipulation.

Marked "H. T. C. No. 1."

By Mr. TUCKER:

Q. Mr. Cummings, you knew George B. Edmonds in his lifetime, did you not? A. I did, very well, indeed.

598 Q. Please state whether you ever saw in his possession a printed book containing a list of claims against the United States that had been rejected by the Southern Claims Commission? A. Well, I do not know what you mean.

Q. Just answer the question the best you can. A. George B. Edmonds had four volumes of the reports of the Southern Claims Commission, three volumes of which took case by case, giving a short description of the case and the action of the Southern Claims Commission on it. The fourth volume seems to have been published later and seems to have been a résumé or condensation of all these cases in tabular form.

Q. Were they Government publications? A. They were Government publications, and as I understand of a very limited number.

Q. Do you know where Mr. Edmonds got those books from? A. My impression is that he got them——

Mr. BIRNEY: I object to the impression of the witness.

By Mr. TUCKER:

Q. Just state what you know of your own knowledge. A. George B. Edmonds was born in the same town where Mr. Ferris lived——

Q. State who Ferris was. A. He was the Second Auditor of the Treasury and had been a commissioner of the Southern Claims Commission, and I know that Edmonds went over and consulted with Ferris about claim business.

By Mr. BIRNEY:

599 Q. Were you present? A. I was not.

Mr. BIRNEY: I object to the witness stating any conversation that took place between Mr. Ferris and Mr. Edmonds.

By Mr. TUCKER:

Q. Mr. Cummings, the question is whether you know where Mr. Edmonds got these Government publications you refer to? A. I

do not know, but I believe from Mr. Ferris; I know he had them, that is all.

Q. Please state where he had them when you saw them in his possession? A. Well, in his office.

Q. Where was his office? A. In the Corcoran building.

Q. Was that office connected in any way with Colonel Gilbert Moyers that you know of, that is, in the same building? A. Oh, no.

Cross-examination.

By Mr. BIRNEY:

Q. After the death of Mr. Edmonds you took possession of all his books and papers you could find? A. I did.

Q. Did you find any such books as those four volumes of reports you have been testifying to? A. No, sir.

Q. Do you know what became of them? A. I do not know, but I presume they were sold; he was hard up and they brought a pretty good price.

600 Q. Have you any knowledge on the subject? A. I have no knowledge whatever.

Q. When did you last see these books, and what directed your attention to them? A. It is impossible for me to say when I last saw them, because when I last saw them they simply passed out of my mind as I did not suppose at that time that they would ever have any connection or anything to do with the case.

Q. What directed your attention to them? A. Because he said that he had a talk with Ferris and I knew Ferris very well and he said that he wanted to help George along all he could.

Q. When was it that Mr. Edmonds had an office in the Corcoran building? A. I could not tell the year.

Q. Can you give the year? A. No; I could not; I should say it was somewheres along about 1885, or '6 or '7.

Q. You cannot come any nearer the date than that? A. No, I cannot.

Q. How long did he maintain an office there? A. I could not tell you.

Q. How early did he begin his tenancy of the office? A. I do not know, but I think some time in '85; but I would not be sure, it might have been '86; I simply know that he had an office in the Corcoran building at that time.

Q. How long did he occupy it? A. I do not know.

601 Q. How many times did you visit his office? A. Probably three or four times.

Q. Did you at that time have any interest in these cases? A. Not a particle, nor in any case in which Edmonds was interested.

Q. I take now from the files of the Court of Claims and show you a paper headed "Petition to the Senate and House of Representatives of the United States of America in Congress assembled," purporting to be signed by Henry T. Cate, and ask you if you know the

handwriting of that paper? A. That is not Mr. Edmonds' handwriting.

Q. Do you know the writing? A. I do not know whose writing it is; no, I do not.

Q. What is the date of that paper? A. There is no date here.

Q. What is the file date? A. February 4, 1888.

Q. In what place? A. It is marked "Referred to the War Claims Committee."

Q. That is the official endorsement? A. That is the stamped endorsement.

Mr. BIRNEY: I offer this paper in evidence.

Filed and marked "G. M. No. 1."

602 Q. You are familiar with the course of procedure in these cases before Congress? A. I cannot say that I am; I know the general way it is done; but I am not entirely familiar with it.

Q. I show you now printed form of petition to the Committee on War Claims of the House of Representatives, dated July 10, 1888, signed by the clerk of the committee, and ask you if you do not know that that is the usual form of reference to the Court of Claims in cases of this kind? A. That is the usual kind.

Q. What is the date? A. July 10, 1888.

Mr. BIRNEY: I offer this in evidence. (Previously marked for identification "H. T. C. No. 1.") I also offer in evidence a paper found in the Court of Claims files entitled a power of attorney, being a power of attorney from Henry T. Cate to Gilbert Moyers, dated Jan. 27, 1888, and acknowledged by Henry T. Cate, before a notary public in the State of Arkansas. (Marked G. M. No. 3.)

Hearing adjourned until Monday, June 17, 1901; 1.30 p. m.

WEDNESDAY, *June* 19, 1901—1.30 p. m.

Hearing pursuant to adjournment.

Present: Messrs. Tucker, Birney, Edwards and Moyers.

CLARENCE CORSON having first been duly sworn testifies as follows:

By Mr. TUCKER:

603 Q. Please state your residence and occupation? A. Cashier of the Columbia National Bank of Washington, D. C.

Q. Have you held any other positions in that bank? A. Yes, sir, paying teller, receiving teller, and note teller.

Q. How long have you been engaged in the banking business in those capacities? A. About twenty five years.

Q. What, if any experience have you had in giving your opinion as to the genuineness of signatures and other handwritings, or pass-

ing upon the genuineness of signatures and other handwriting? A. In the position of teller it is necessary to pass daily upon a great many signatures.

Q. Have you ever testified as an expert in handwriting? A. I have.

Q. I hand you two papers found among the effects of the late George B. Edmonds, in a jacket marked Sarah S. Sutton, one of which purports to be a fee contract signed by Henry T. Cate, dated February 25th, 1886; the other purporting to be a power of attorney dated the same day and signed by Henry T. Cate; and also a paper purporting to be a petition found among the files of the Court of Claims in the case of Henry T. Cate against The United States and dated March 11th, 1892; also a jacket containing the testimony of Henry T. Cate and others found among the same files, directing your attention particularly to the signature of Henry T. Cate to his testimony, and ask you to compare the signatures on the
604 first two papers referred to with the signatures on the other papers, and state whether or not in your opinion the signatures on all the papers were written by the same person?

Mr. Birney objects on the ground that the witness has not sufficiently qualified himself to testify as an expert, and on the further ground that some of the papers upon which the witness is asked to testify are not in the case and not proper. Mr. Tucker adds to his question the following:—Assuming that the genuineness of the signature on the first two papers is disputed, and the genuineness of the signatures on the other papers is undisputed, please state whether in your opinion the signatures on the first papers named were written by the same person who wrote the signatures on the other papers referred to in this question?

Mr. Birney objects.

Mr. Birney admits the genuineness of the papers other than the first two shown the witness.

Q. I hand you a paper taken from Mr. Edmonds' office papers in the case of Anna Hunt, purporting to be a fee agreement dated June 1st, 1886, signed by Anna Hunt, and also a letter dated November 28th, 1890, addressed to Mr. Moyers and purporting to be signed by Anna Hunt, and ask you to examine those two papers and assuming that the first one contains the disputed signature of Anna Hunt, and the second one the undisputed signature of Anna Hunt, and state whether in your opinion the signatures in both papers were made by Anna Hunt?

605 Mr. Birney objects.

The auditor states that he would like to hear counsel on this question.

The witness is excused for the present and the hearing is adjourned to Wednesday, June 26th, 1901, at 3 o'clock p. m.

WEDNESDAY, *July* 3, 1901—1 p. m.

Hearing pursuant to adjournment.

Present: Mr. Tucker for the complainant, Mr. Birney for the defendant.

HORACE S. CUMMINGS, recalled.

By Mr. TUCKER:

Q. Mr. Cummings I hand you a paper taken from the files of the Court of Claims in the case of Richard Butler against The United States purporting to be a petition addressed to the Senate and House of Representatives by Roland Butler, undated but bearing the file marks "June 15, 1886, referred to the Committee on War Claims." "February 14, 1888, referred to the Committee on —," and, "Filed, Feb. 16, 1889." This petition is on a blank form. I ask you to examine the handwriting of that petition, with the exception of the signatures, and state whose handwriting that is, if you know?

(Handing witness paper.)

A. George B. Edmonds.

Q. I hand you a paper taken from the Court of Claims files in the case of John R. Hornbaker against The United States, which
606 paper is on a printed form and purports to be a petition addressed to Congress by John R. Hornbaker, bearing the file marks, "May 5, 1886, referred to the Committee on War Claims," and "Jan. 25, 1888, referred to the Committee on —," and "May 22, 1890, referred to the Committee on —," and also, "Filed Aug. 17, 1890." I ask you to examine the handwriting of that petition, save the signature, and state whose handwriting it is? A. George B. Edmonds.

CLARENCE CORSON, re-called.

By Mr. TUCKER:

Q. I hand you two papers found among the effects of the late George B. Edmonds, in a jacket marked Henry T. Cate, one of which purports to be a fee contract signed by Henry T. Cate, dated February 25, 1886, the other purporting to be a power of attorney dated the same day and signed by the same person, and also a paper purporting to be a petition found among the files of the Court of Claims in the case of Henry T. Cate *vs.* The United States, dated March 11, 1892, and also a package of papers containing the testimony of one Henry T. Cate and others found in the same files, and ask you to compare the signatures of the first two papers referred to with the signatures of the other papers and state whether or not in your opinion the signatures on all the papers were written by the same person?

(Handing witness papers.)

607 Mr. BIRNEY: I object to the question on the ground that it appears—referring to the two papers first mentioned as found among the papers of George B. Edmonds, the signature in each case is witnessed by two attesting witnesses, and it is the evident purpose of the inquiry to attempt to prove these papers and they are proveable only by the attesting witnesses and not by expert testimony.

The AUDITOR: I will allow the question to be answered, and whether it is sufficient proof to establish the rights of Mr. Cummings' intestate under these papers may be considered further along in the case.

A. It is my opinion that the signatures on all the papers submitted were written by the same person.

By Mr. TUCKER:

Q. I hand you a paper taken from the files of George B. Edmonds purporting to be a fee contract dated March 25, 1886, and signed by Jane A. Sutton, and also two letters taken from the same files, one dated March 16, 1886, and the other dated March 25, 1885, addressed to Mr. Edmonds and purporting to be signed by Mrs. Jane A. Sutton, and ask you to compare the signatures on those papers with two letters dated January 26, 1891, and November 26, 1892, and a postal card dated April 6, 1891, all addressed to the defendant, Moyers, and taken from his office files, and ask you to state whether in your opinion the signatures on all of these papers submitted to you were written by the same person? (Handing witness papers.) A.
608 It is my opinion that the signatures on all of the papers submitted were signed by the same person.

Q. I take from a jacket found among Mr. Edmonds' effects, marked Richard Butler, a paper dated February 8, 1886, purporting to be a fee contract signed by Richard Butler by his mark and Mr. William Morrell and John G. Butler as attesting witnesses, and also a paper taken from the Court of Claims files in the case of Richard Butler *vs.* The United States purporting to be a petition to Congress signed by Richard Butler, by his mark, before Jane Butler and William Morrell as witnesses, and ask you to compare the signatures of the attesting witnesses and state whether in your opinion the signatures of the attesting witnesses on both of the papers were written by the same persons. (Handing witness papers.) A. I give it as my opinion that the signatures of the witnesses were written by the same persons.

Q. I hand you a paper purpor-ing to be a fee agreement, dated February 11, 1886, signed by John P. Davidson and taken from a jacket found among Mr. Edmonds' effects, and also the following papers taken from the Court of Claims files all bearing what purports to be the signature of the same person, namely, deposition of J. P. Davidson, also power of attorney dated the — day of March, 1874, purporting to be signed by J. P. Davidson, also power of attor-

ney dated April 18, 1877, also affidavit purporting to be signed by J. P. Davidson, dated 4th of February, 1877, also affidavit dated June 6, 1888, which purports to be signed by J. P. David-
609 son, and ask you to examine all of those signatures and state whether in your opinion they were written by the same person?

Mr. BIRNEY: It is understood that my first objection applies to all these questions.

A. It is my opinion that the signatures to all the papers submitted were written by the same person.

Q. I hand you a paper purporting to be a fee agreement taken from Mr. Edmonds' effects, dated February 22, 1886, purporting to be signed by W. R. Wellborn, also one letter addressed to Mr. Edmonds, dated February 10, 1886, and purporting to be signed by W. R. Wellborn, and ask you to compare those signatures with the signatures on the following papers taken from the Court of Claims files, namely, a petition dated April 9, 1892, signed by William R. Wellborn, a petition dated October 21, 1871, signed by W. R. Wellborn, and deposition of William R. Wellborn, and ask you to state whether in your opinion the signatures were written by the same person? (Handing witness papers.) A. It is my opinion that the signatures on all the papers submitted were written by the same person.

Q. I hand you a paper purporting to be a power of attorney, dated April 16, 1886, signed Jasper Gall, fee agreement dated April 16, 1886, signed by Jasper Gall, and letter dated March 3, 1886, signed Jasper Gall, all three found among the effects of Mr. Edmonds, and ask you to compare them with the signatures of Jasper Gall in the following papers found among the files of the Court of Claims: petition dated June 23, 1871, and the deposition of the same
610 person found among the Court of Claims files, and ask you to compare all of these signatures and state whether in your opinion they were written by the same person? (Handing witness paper.) A. It is my opinion the signatures on all the papers submitted were written by the same person.

Q. I hand you paper purporting to be a fee agreement dated February 4, 1886, signed Paige Braboy, before William L. Alexander and W. W. Alexander witnesses, found among Mr. Edmonds' effects, and the following paper taken from the Court of Claims files containing the signature of Paige Braboy, namely, deposition of Paige Brayboy, taken May 3, 1893, and ask whether in your opinion those signatures were all written by the same person? A. It is my opinion that the signatures on all the papers submitted were written by the same person.

Q. I hand you a power of attorney dated October 14, 1886, purporting to be signed by John Ehs, by mark, before J. M. H. Martin, and Maggie Ehs attesting witnesses, found among Mr. Edmonds' effects, and also a petition found among the Court of Claims files

signed by John Ehs, by his mark, before J. M. H. Martin and Maggie Ehs and dated the same date, and ask you to compare the signatures of the attesting witnesses and state whether they were written by the same persons? A. It is my opinion that the signatures of the witnesses to the papers submitted were written by the same persons.

Q. I hand you a paper taken from Mr. Edmonds' effects and purporting to be a fee agreement, signed by Anna Hunt in the presence of O. H. McGinty and R. Harrison, dated June 1, 1886,
611 and also two letters dated May 7, 1886, and June 1, 1886, addressed to Mr. Edmonds and signed by H. E. Newton, both relating to Mrs. Hunt's claim; I also hand you a paper taken from the Court of Claims files and being a petition addressed to that court, filed June 30, 1890, signed by Anna Hunt, and sworn to by her before O. H. McGinty, chancery clerk. Please compare the signatures of Anna Hunt on the Edmonds papers with the signatures of Anna Hunt on the Court of Claims petition, and also the signature of O. H. McGinty on the Edmonds paper with the signature of O. H. McGinty on the Court of Claims paper and state whether in your opinion they were written by the same persons? A. It is my opinion that the signatures of Anna Hunt and O. H. McGinty on the papers submitted were written by the same person.

Q. I hand you a paper found among Mr. Edmonds' effects, dated April 28, 1886, purporting to be signed by Hattie E. Ladd before W. K. Black and Thomas Ladd, and also a power of attorney dated April 28, 1886, to George B. Edmonds and purporting to be signed by Hattie E. Ladd in the presence of W. K. Black and Thomas Ladd, found among the Court of Claims files, and ask you to compare the signatures of the several parties and state whether in your opinion they were written by the same persons (handing witness papers)? A. It is my opinion that the signatures to the papers submitted were signed by the same persons.

Q. I hand you a letter found among the office files of the
612 defendant, Mr. Moyers, dated August 19, 1886, purporting to be signed by J. M. Harding, also letters purporting to be signed by J. M. Harding found among Mr. Moyers' papers dated June 5, 1890, December 27, 1895, May 22, 1891, May 22, 1893, and ask you to examine the signatures of J. M. Harding on all the papers submitted to you and state whether they were signed by the same person. A. It is my opinion that the signature of J. M. Harding on all the papers submitted were written by the same person.

Q. I hand you a paper, being a fee agreement dated October 16, 1886, purporting to be signed by W. Williams in the presence of John F. Brown, found among the effects of Mr. Edmonds, and a petition found among the Court of Claims files, signed Wilson Williams and sworn to before John F. Brown, chancery clerk, dated February 14, 1890, also a petition found among the Court of Claims files signed Wilson Williams and sworn to before John F. Brown January 11, 1888, and ask you to compare the signatures of Williams

and Brown on the several papers and state whether in your opinion they were signed by the same person. A. It is my opinion that the signatures on all the papers submitted were written by the same persons.

Q. I hand you a fee agreement dated March 10, 1886, found among Mr. Edmonds' effects and purporting to be signed by J. R. Hornbaker, and also a petition found among the Court of Claims files, bearing the file mark, "Filed August 7, 1890," and
613 signed by J. R. Hornbaker, also a petition found among the Court of Claims files and dated May 7, 1894, signed J. R. Hornbaker, and ask you to compare the signature of J. R. Hornbaker on the several papers, and state whether in your opinion they were written by the same person. A. It is my opinion that the signatures of the papers submitted were written by the same person.

Q. I hand you a fee agreement dated June 3, 1886, found among Mr. Edmonds' effects and purporting to be signed by William T. Fauber, and also a petition to the commissioners of the Court of Claims found among the files of the Court of Claims and bearing the file mark March 3, 1892, and also a petition addressed to the Court of Claims and bearing the Court of Claims file mark of May 29, 1894, signed William T. Fauber, and ask you to examine the signatures on all the papers submitted to you and state whether in your opinion they were written by the same person? A. It is my opinion that the signatures on all the papers submitted were written by the same person.

Hearing adjourned subject to notice.

DEC. 10, 1901—2 p. m.

Hearing pursuant to notice.

Present: Messrs. Tucker, Birney and Cummings. H. S. Cummings recalled by Tucker.

HORACE S. CUMMINGS, having been recalled for further examination testifies as follows:

614 By Mr. TUCKER:

Q. Please state whether last summer you made an examination of the office papers of the defendant in the Anna Hunt claim? A. I did.

Q. What, if any paper, did you find among the office papers in that case, in which the name of Mr. Edmonds figured? A. In looking over the papers in the Anna Hunt case, I found a memorandum written by Col. Moyers directed to some person not named, directing that the deposition of the "widow lady" residing near some place that I can not recall, should be taken at once, as Mr. Edmonds was anxious that the case should be pushed.

Q. In whose hand writing was that paper? A. Col. Moyers.

Q. Please state whether or not it was signed by Col. Moyers? A. I think the initials "G. M." were signed to it.

Q. Where did you make this examination of the papers in the Anna Hunt case? A. At the table, in this room.

Q. What, if anything, was done with those papers including the one you have testified to, after your examination of them? A. I called your attention to it and suggested that these papers——

Birney objects.

615 Q. State what was done with all papers including that particular paper? A. They were handed to the auditor for him to put in his safe.

Q. Are you familiar with the handwriting of the defendant, Gilbert Moyers? A. I am.

Q. You have seen him write? A. I cannot say that I have seen him write, but I have seen a great deal of his writing that I know was his.

Q. You have had correspondence with him? A. I have.

Cross-examination.

By Mr. BIRNEY:

Q. On what kind of paper was this writing? A. On ordinary, as I recall, ordinary letter paper.

Q. Was there any other writing upon that paper other than the memorandum you have mentioned? A. I could not say; that was the only part that struck me as being of interest to me, and I could not recollect whether there was any other.

Q. And you cannot say whether there was any other writing on that sheet of paper? A. I cannot recall positively, but I am of the impression that on the other side of the sheet there was writing.

Q. On the back? A. I would not say positively.

616 Q. Can you give the language of that writing? A. Only as I have stated, but I recollect specially the phrases in which he described the "widow lady."

Q. Did you ascertain to whom that designation applied? A. I did not.

Q. Can you tell to whom that memorandum was addressed, if to any one? A. I could not, for there was other writing on that paper that might show it. I only remember coming across that statement, and the rest I paid no attention to.

Q. Was Mrs. Hunt's name mentioned on that paper and if so, how? A. I do not think it was.

Q. And the supposed witness's name was not mentioned? A. No.

Q. Nor the commissioner? A. No, not as I recollect.

Q. You have given the fullest description now that you can give? A. I think I have.

Q. Was that paper attached to any other paper? A. I don't think it was.

Q. Was there more than one sheet? A. Not as I recollect, but in this statement I only simply say it was the substance of what I read that directed my attention. I supposed that the paper would be in evidence.

617 Mr. TUCKER, having first been duly sworn, testifies as follows:

In connection with Mr. Cummings, on one day last summer, in the auditor's office I made an examination of the office papers, produced by the defendant in this case, that of Anna Hunt, administratrix, against The United States. Among these papers, we found a slip of paper containing writing signed by Gilbert Moyers, or "G. M." and containing in substance a direction to someone whose name was not mentioned, to take the deposition of the "widow lady" near a place, the name of which I do not recall, but think it was Natchez, Mississippi, and stating further that Edmonds was anxious to have the claim prosecuted vigorously. The slip of paper was replaced by us among the other office papers of the Anna Hunt case, and the batch of papers were handed to the auditor in order that he might place them in his safe. The papers were taken from the safe and used in the course of taking testimony in the case. They were subsequently taken from the auditor's office by the defendant, Moyers and were returned by him only after considerable effort was made to induce him to bring or send them again to the office of the auditor. I again examined the papers and found that the slip of paper containing the handwriting I have mentioned was missing from the batch of papers.

Cross-examination.

By Mr. BIRNEY:

Q. Please describe that piece of paper? A. As I recall it, it
618 was on a half or quarter sheet of paper, and my best recollection is that the writing on it was in pencil, the substance of which I have already given as near as I can recollect it.

Q. Was there any other writing on that piece of paper? A. I do not recollect that there was.

Q. Not on either side? A. I do not recollect it.

Q. To whom was that writing addressed? A. To no one.

Q. State as near as you can the language of that memorandum? A. I can not state the exact language, in substance however it was a direction to take testimony of the "widow lady," residing near some place, the name of which I cannot recall, but I think it was Natchez, Miss., as soon as possible as Edmonds wanted the case pushed. That was signed either Gilbert Moye-s or "G. M." and was written in pencil.

Q. It was written? A. Yes sir.

Q. And that might have been a memorandum reminding the writer that he was to do something? Might it not?

Mr. TUCKER: I object to that form of question.

ROBERT JOHNSON recalled to the witness stand.

619 Mr. Birney states that he offers this witness to show the cost and expenses incurred in the course of the prosecution of these cases, shown in Exhibit A. in the bill of complaint.

Mr. Birney further states that his purpose is, the witness having examined the evidence in the Court of Claim-, to have him testify as to witness and attorneys' fees shown on those records; also the number of pages of typewritten matter.

The cases to which his attention will be called are as follows:

Henry T. Cate.
James C. Tappan, administrator of Sutton.
John P. Davidson.
William R. Wellborne.
Jaspar Gall.
Bagnell, administrator of Bravoy.
Anna Hunt, administratrix of George F. Hunt.
M. K. Thornton.
Wilson Williams, administrator of Roderick Williams.
J. Hardin, administrator of Maury.

Mr. Tucker objects to testimony here offered to be produced, on the ground that the defendant at the commencement of the accounting, and throughout the accounting, has denied that any of the claims mentioned were partnership claims, or that the decedent, Edmunds, or his estate, has any interest whatever in them, and therefore that the defendant should not now be allowed to re-open

620 the case in order to produce this testimony, and in view of the possible finding by the auditor that the claims mentioned were partnership claims——

Mr. BIRNEY: The testimony is offered in view of the claim made by the complainant that these are partnership claims and that the defendant should be charged on account of liability for fees received. If this be true he is also entitled to credit for costs expended. It does not change or elaborate his claims in any wise that these are not partnership cases.

The objection is overruled.

Mr. Tucker notes an exception to the ruling.

ROBERT JOHNSTON testifies as follows:

By Mr. BIRNEY:

Q. Please state your occupation. A. Stenographer and clerk.

Q. By whom employed? A. Col. Gilbert Moyers.

Q. How long have you been in the employ of Col. Moyers? A. Two years last May.

Q. Have your duties while in his employ made you familiar

621 with the Court of Claims records? A. Yes.

Q. Have you at the instance of counsel for the defendant, examined the court files in the case of Henry T. Cate? A. I have.

Q. You ascertained the costs charged on these files as having been created in that case? A. Yes.

Q. You have made a memorandum of that and other cases already mentioned in your hearing, showing the costs and expenses? A. Yes sir.

Q. Please look at your memorandum and say what the Court of Claims files show were the costs, giving the items? A. On the testimony taken at Fayetteville, Arkansas, there is noted on the certificate of the notary $3.60 paid; (that is itemized showing how it is made up.) Then, of course, there are the expenses of preparing briefs.

Q. I want the costs first? A. Three dollars and sixty cents.

Q. What typewriting work, in additional to the costs of taking testimony is there? A. I find twelve pages of typewritten legal cap, claimant's brief on loyalty; also 28 pages of his brief on merits, typewritten legal cap, and four pages of defendant's brief on merits, making 44 pages of typewritten briefs.

Q. I direct your attention to the case of James C. Tappan,
622 administrator of Sutton, and ask what costs and expenses you found charged in that case? A. I found 15 pages of deposition and I estimated by counting a few pages, to find the number of words in a page and 35 folios at 15c. per folio, which is allowed by the rules of the court, makes $5.25, and with a *per diem* of $3.00 makes the total amount of $8.25. That would be the cost of taking the deposition.

Q. Did you find any other taxed costs of that kind or not? A. No more.

Q. What typewriting did you find? A. I found five pages of typewriting briefs on loyalty and ten pages of typewritten briefs on merits, making 15 pages of typewritten matter.

Q. Please state what you found in the case of John P. Davidson? A. I found charges marked on the depositions taken by Miss O'Neal, commissioner at Rome, Georgia, on Jane. 10, 1893, $12.23, and depositions taken at Rome Georgia on Jan. 25, 1893, $5.55, marked on them as commissioner's fees.

Q. Did you find any typewriting? A. Yes, 12 pages of typewriting in brief on loyalty, 57 pages of typewriting in briefs on merits, and 2 pages of reply to def'ts' briefs on merits, making 71 pages of typewriting matter in the briefs.

Q. State what you found in the case of William R. Wellborne?
A. I found the deposition taken Oct. 1, 1890, at Madison,
623 Georgia, consisting of 115 folios as I estimated it after counting a few pages, at 15c. per folio, $17.25, and the *per diem* of $3.00. Then depositions taken Jan. 19, 1893, by Miss O'Neill, the fees are marked $11.05. That is all the costs in those depositions.

Q. What did the typewriting cost? A. Twenty pages of brief on loyalty and twenty pages brief on merits.

Q. What did you find in the case of Jaspar Gall? A. I found twenty-one pages of depositions and estimated it at 45 folios, that

allows two folios to a page at 15c. per folio and amounts to $6.75 with a *per diem* of $3.00. That was all on deposition.

Q. What about the typewriting? A. Nine pages, brief on loyalty, three pages of reply to defendant's brief on loyalty, six pages of brief on merits, and one and one-half pages of reply to defendant's brief on merit-, making a total of 19½ pages.

Q. What did you find in the case of Bagnell, administrator of Braybov? A. I did not find any depositions with the papers; they were taken after the case was referred to the court, but I looked through the brief and the brief shows that such depositions were taken.

Q. Is there anything in the papers to show the costs of these depositions? A. No, sir.

Q. What typewriting did you find? A. Nine pages of brief on loyalty and 38 pages of briefs on merits.

624 Q. In the case of Mrs. Labb what did you find? A. I found depositions consisting of 58 folios at 15c. making $8.70 and a *per diem* charge of $3.00, which makes a total of $11.70.

Q. Any typewriting? A. Three pages of brief on loyalty, 28 pages of briefs on merits and 2 pages of reply brief on merits.

Q. What did you find in the case of Anna Hunt, administratrix of George F. Hunt? A. I found depositions taken by Mr. Shelton, Oct. 18, 1899, 60 folios, at 15c., $9.00, and a *per diem* of $3.00, and deposition taken November 9, 1890, 142 folios at 15c., $21.30, with a *per diem* of $3.00.

Q. What typewritten matter? A. Fifteen pages of brief on loyalty and 79 pages of brief on merits.

Q. What did you find in the case of J. Harding, administrator of Maury? A. I found a deposition taken May 3, 1893 upon stipulations between the attorneys; that it should be taken on interrogatories; about 40 folios with a *per diem* of $3.00. A deposition taken at Port Gibson on Nov. 20, 1889 by Mr. Shelton, 21 pages of writing, and about 50 folios; that would be $7.50 and with a *per diem* of $3 00.

Q. What of typewritten matter? A. Thirty six pages of brief on loyalty, 8 pages of supplemental briefs on loyalty and 25 pages of brief on merits.

625 Q. What did you find in the case of Wilson Williams, administrator of Roderick Williams? A. I found depositions taken by Mr. Shelton at Oxford, Miss., 29 pages, which I estimated at 80 folios, $12.00, and a *per diem* of $3.00; then there were some depositions taken at Pine Flat Church, consisting of 23 folios, $3.45 and a *per diem* of $3.00.

Q. What typewriting? A. Seven pages of brief on loyalty, 14 pages of brief on merits and 2 pages of reply to defendant's brief on merits.

Q. What did you find in the case of M. K. Thornton? A. I found deposition consisting of 35 folios at 15c., $5.25, with a *per diem* of $3.00.

Q. What typewriting? A. I found brief on loyalty 10 pages and 28 pages of brief on merits.

Mr. Tucker moves to strike out all testimony of witness on the grounds set out in the objection made to the offer of proofs heretofore named.

The objection is overruled.

Mr. Tucker notes the exception.

Mr. Tucker also moves to strike out all the testimony of the witness as to the commissioner's charges, based upon the number of folios in the depositions in the respective cases. And also as to the commissioner's *per diem* charges upon the ground that it has not been shown by witness that the charges of the commissioner
626 were ever paid by the defendant, and also upon the ground as to the number of folios, its testimony consists simply of estimates. He also further objects to the witness's testimony concerning the number of pages of typewritten matter found in each claim, on the ground that there is no testimony showing that this typewriting was paid for by the defendant or was done by the clerk or clerks in his employ, and if done by the clerk or clerks, what the salary of those clerks was.

TUESDAY, *Dec.* 17, 1901—10.30 a. m.

Present: Messrs. Tucker and Birney.

GILBERT MOYERS, having been re-called, testifies as follows:

BY Mr. BIRNEY: Testimony has been given here by Mr. Cummings and Mr. Tucker as to a certain paper said to have been found in the files of the case of Anna Hunt, administratrix, when your office files were first produced before the auditor and not now found there.

Q. Have you that paper or any part of it, if so please produce it and make any statement to the auditor about it that you may wish.

Witness produces paper.

A. I have the paper referred to very near complete. There is one small strip missing. When the papers were returned to me, (I think Mr. Wilson, a clerk in my office came after them) I found
627 this slip in the jacket. It was not there when it left my office originally. I know that because we keep a schedule of each and every paper in the jackets. This paper related to a different case entirely, a case at Natchez, Mississippi, some fifty miles by — from Rodney, where Mrs. Anna Hunt's case is located, and Mrs. Hunt resided. There is enough of that paper to establish that.

Q. You now have that paper here? A. Yes.

(Hands counsel the paper.)

Q. This paper, as you produce it, is in four strips torn from the

bottom to the top of the sheet. Please explain how the paper was torn and how it is that it is incomplete in one strip, as you have already stated? A. Mr. Wilson and I were going through the papers and we found that paper in the case. As it did not relate to the Anna Hunt case, it was torn up. It was never placed in that jacket by me or by my authority.

Q. In whose handwriting is the writing written across the paper from left to right? A. It appears to be in my handwriting except the initials "G. M." I never write G. M., except by cutting those two letters.

Q. In whose handwriting is the writing in ink, as follows, "Hunt Miss. Get papers for brief 6560?" A. That is not in my handwriting or the handwriting of any of my clerks for the last ten years.

Q. Do you know whose handwriting it is? A. I do not. It is fresh writing and the number is changed. The party writ-
628 ing it evidently made a mistake changing the number "0" to "8."

Q. 6568? A. Yes sir, they evidently discovered the number of the Hunt case to be 6568 and changed it to an 8.

Q. Where was the testimony in relation to Mrs. Hunt's case taken? A. It was taken principally at Carey, some fifty or seventy-five miles away; it is a station on the railroad. That is the testimony was taken principally there as the claims arose upon a plantation belonging to the Hunt estate at that station. There was also testimony taken at Rodney where Mrs. Hunt resided; that covered the homestead about six miles from Rodney.

Q. Before this paper was torn, as you have stated, was it not longer than it is now? A. No, I think not. It evidently was not.

Q. Was there any other writing upon it than what is now found in the ink marginal writing and the pencil writing if filled out with the missing strip? A. No.

Q. What testimony, if any, touching the Hunt case was taken at Natchez? A. No testimony in the Anna Hunt case was ever taken there.

Q. Were there any other cases among those produced herein, in which testimony was taken at Natchez? A. There was a case or two which I recall was dismissed by the court for the reason that proof of loyalty was insufficient, that were Edmonds cases. I can give the cases by an examination of the jackets. I think the case
629 of Mrs. Chamberlain was one, and also the case of Mrs. Owen, whose cases originated in that locality.

Q. What was there on this paper to indicate that Natchez was the place concerned? A. No part of the word Natchez is very distinct.

Q. Where? A. On the second line.

Q. That pencil writing? A. Yes sir, and I know it was a case near Natchez or at that city to which this memorandum related.

Q. Did you read the memorandum before it was torn? A. Yes

sir. I found it was not on the schedule and did not relate to that case.

Q. Are you able to recall with any distinctness the words which do not now appear in the writing by reason of the missing strip? A. I can not fill those out accurately, but there is a "M" and reference to a lady's claim in that locality.

Mr. Birney offers the paper in evidence and it is marked Exhibit G. M. Dec. 17/01.

Cross-examination.

By Mr. TUCKER:

Q. How soon after these papers were taken from the auditor's office in the Anna Hunt case was this slip of paper discovered, torn up, and thrown in the waste basket? A. I think I did not examine the papers until about the time they were returned here, it may have been some little time previous to that.

630 Q. Why did you not return this slip with the other papers and make an explanation? A. For the reason that in comparing and making up this schedule that paper was not among them.

By Mr. BIRNEY:

Q. Where is Mr. Wilson now? A. He is at the Soldiers' Home at Hampton, Virginia.

Q. He is not in your service now? A. No, sir.

Q. Did he take this paper with him? A. I do not know.

Q. How do you know that this paper was not in the case at that time? A. Because it was not shown by the schedule.

Q. Where is that schedule now? A. Mr. Wilson has it.

By Mr. TUCKER:

Q. You mean to say that you had a schedule for every case that was filed in your office? A. In every case brought to this office.

Q. What is case No. 6560? A. I have not examined my dockets to see.

Q. Is that 6560 or 6568, is that your office number or the Court of Claims number? A. I do not know, I have not examined the files to see, I should have examined the files this morning.

Q. This writing in ink was on the paper when you found it, was it not? A. It was.

631 Q. Can you tell us definitely what case this paper referred to if it does not refer to the Anna Hunt case? A. I cannot, only it refers to a case at Natchez.

Q. By examining this paper can you state exactly what the official memorandum of this account was originally? A. I cannot state fully.

Q. Examine it and state what you can. I want you to supply the missing words and give us the whole contents of the paper as

near as you can. A. There was a number of words there but I could not give them. The words, Natchez, and lady are very distinct.

Q. Please read this paper which I understand is in your handwriting, all except possibly the initials G. M., according to your testimony as it now appears.

Witness reads paper as follows—"In the," this word, "taking," and then the word "Natchez" and "that lady," then the word "Edmonds," "I am especially," then the word "I" and "th," then something missing, and then "M-y." The next word I cannot make out, "nohow a," then "G. M." apparently without date being carried out.

Q. Apart from this schedule which you say was made, can you state positively whether or not this slip of paper was in your office files in the Anna Hunt case? A. It was not.

Q. You recollect that independent of this alleged schedule? A. I do.

632 Q. Do you remember any other papers that were in the Anna Hunt case? A. I can mention some letters.

Q. Mention some. Q. Letters in regard to taking testimony, letters to Bijah Hunt, a letter advising him to come to Washington, another letter promising to pay part or all of the expenses of his case——

Q. How many papers would you say were in that case? A. I suppose possibly fifteen or twenty, perhaps more.

Q. Do you think there were over twenty-five or thirty? A. I should say fifteen or twenty at least.

Q. And you only recall these two or possibly three letters that were received from Bijah Hunt? A. I did not say two or three.

Q. What did you say? A. I said several.

Q. Do you recall any other letters from Mr. Hunt? A. A letter from Mr. Newton, a son in law of Mrs. Hunt, bearing date 1886 or 1887.

Q. How many? A. I could not say.

Q. Can you make a rough estimate of it? A. I could not say, probably four, five, or six, I could not say.

Q. How far is Natchez from Rodney? A. About thirty miles as the crow flies, by river I should judge it was about fifty miles.

633 Q. How large a place is Rodney? A. It does not contain more than one hundred and fifty inhabitants.

Q. Is Natchez the nearest city to Rodney? A. I think Vicksburg is further than Natchez. Natchez is about the center of Adams county.

Q. Do you recall the Susan Merrill case? A. Very clearly.

Q. Do you recall what the fee agreement in that case was? A. My recollection is that it was fifty per cent., but I would not be certain. That was settled by Mr. Francis and he collected the fee, it being his case. I can state by reference to my books what it was.

Q. Is it not the case in which he gave you his note for his fee in that case? A. Yes sir, that and another case in Hot Springs. I had the money which I gave to him and he gave me his note. It was subsequently paid out of the Bagley case.

Q. What proportion of the fee in the Susan Merrill case was his and what yours? A. I took a contract to collect his claims for ten per cent.

Q. Collect whose claims? A. Mr. Francis'. He turned all of them over to me.

Q. Do I understand that in this Merrill contract you only got ten per cent. of the fee? A. That was according to our contract, there might have been some expenses.

Q. If the judgment was for eight hundred and fifteen dollars
634 the fee of fifty per cent. would be a little over four hundred dollars, do I understand you to say you received but forty dollars as a fee in that case? A. That is my recollection, with possibly some additional compensation for expenses incurred that I do not remember.

Q. What was the amount of Mr. Francis' note to you? A. A little over three hundred dollars I think, I can give you the amount by a reference to my books or the note.

Q. You think this Susan Merrill case was originally sent to you by Mr. Francis under your agreement to prosecute his cases for ten per cent. of the fee? A. I do not think so but know so. He had the case before the commissioner of claims, that is the firm of Pruitt & Francis.

Hearing is adjourned subject to notice.

635 *Order Over-ruling Defendant's Motions to Remand Cause to Auditor, &c.*

Filed February 5, 1903.

In the Supreme Court of the District of Columbia, Holding an Equity Court for said District.

HORACE S. CUMMINGS, Administrator of the Estate of George B. Edmonds, Deceased, Complainant,
vs.
GILBERT MOYERS, Defendant.
} Equity. No. 20802.

This cause having come on to be heard upon the motions of the defendant to remand the cause to the auditor of this court and for leave to file a cross bill herein, and upon the exceptions of the defendant to the report of the said auditor, which report was filed on the 20th day of August, 1902, (the exceptions of the complainant to said report having been withdrawn) and after argument by the

solicitors for the respective parties, it is, by the court, this 5th day of February, A. D. 1903, adjudged, ordered and decreed as follows, to wit:

1. That said motions of the defendant be, and they are hereby, over-ruled.

2. That the exception of said defendant to said report relating to the claim of R. M. Johnson, administrator of Samuel Heard, which the auditor found to be a partnership claim and in which he further found that the defendant collected a fee due said partnership of $1,052.50, of which one-half was payable to the complainant, be, and the same is hereby sustained.

636 3. That each and every of the defendant's other exceptions to the said report be, and the same are hereby overruled, and that the said report be, and the same is hereby in all things, except as to the finding in the matter of said claim of R. M. Johnson, administrator of Samuel Heard, deceased, ratified and confirmed.

4. That the defendant be, and he is hereby directed to pay within ten days after the passage of this order to the complainant, as administrator of the estate of George B. Edmonds, deceased, the sum of ten thousand and seventy-four dollars and seventy-nine cents ($10,074.79), with interest thereon at the rate of six per centum per annum from September 16, 1899, until paid, and the costs of this suit to be taxed by the clerk of this court; the complainant to have execution therefor as at law, together with such other remedy or remedies for the enforcement of this decree as the law provides for.

5. That this cause be, and the same is hereby retained, and the right saved and reserved to the complainant to apply to this court from time to time for an order or orders for the payment of such other and further sums of money as he may show to have come into the hands of the defendant as surviving partner of the partnership heretofore adjudged to have existed between the said defendant and the said George B. Edmonds, deceased, or into the hands of the receivers heretofore appointed herein, or which may hereafter come into the hands of said defendant or said receivers, or either of them, and which may be due to the complainant as administrator of the defendant's said deceased partner, George B. Edmonds, by reason of the existence of said partnership.

A. B. HAGNER,
Asso. Justice.

637–642 From the above order and decree the defendant prays an appeal, which is allowed and the penalty of the appeal bond fixed at twenty thousand dollars.

A. B. HAGNER,
Asso. Justice.

Feb'ry 5, 1903.

Memorandum.

February 28, 1903.—Appeal bond filed.

* * * * * * *

643 *Stipulation and Order, &c.*

Filed April 13, 1903.

In the Supreme Court of the District of Columbia.

HORACE S. CUMMINGS, Administrator, Complainant,
vs.
GILBERT MOYERS, Defendant. } No. 20802. Equity.

It is hereby stipulated and agreed by and between the parties hereto, that whereas the defendant, Gilbert Moyers, has an appeal pending from the decree of this court to the Court of Appeals of the District of Columbia.

And, whereas, the time allowed under the rules of the court for the filing of transcript expires on or about April 16, 1903;

Now, therefore, in consideration of negotiations now pending for a settlement of the matters now involved in said appeal and in this cause, it is hereby stipulated and agreed that the time for filing said transcript on appeal may and shall be extended until and including May 16, 1903: Provided, that on or before April 30, 1903, the defendant herein shall deposit with the clerk of this court the money necessary to secure such transcript; this stipulation to be considered null and void, unless such deposit be made as aforesaid.

Signed, this 10th day of April, A. D. 1903.

CHAS. COWLES TUCKER,
Solicitor for Plaintiff.

BENJ. CARTER,
Solicitor for Defendant.

644–651 In the Supreme Court of the District of Columbia.

HORACE S. CUMMINGS, Administrator of George B. Edmonds, Dec'd, Plaintiff,
vs.
GILBERT MOYERS, Defendant. } No. 20802. Equity.

Order.

Upon consideration of the attached stipulation filed in this cause, it is hereby ordered that the time allowed defendant for filing transcript on appeal to the Court of Appeals of the District of Columbia, be and the same is hereby extended until and including May 16, 1903, provided, that on or before April 30, 1903, the defendant shall deposit with the clerk of this court, the money necessary to procure

such transcript, this order to be vacated in default of such deposit within the time above mentioned.

By the court this 13th day of April, 1903.

A. B. HAGNER,
Associate Justice.

* * * * * * *

652 *Stipulation as to Time for Transcript.*

Filed May 18, 1903.

In the Supreme Court of the District of Columbia.

H. S. CUMMINGS, Adm'r, etc., *vs.* GILBERT MOYERS. } Equity. No. 20802.

It is hereby stipulated and agreed that the time for filing transcript of record required in the pending appeal of defendant, to wit, from the decree of the court entered on February 5th, 1903, be and is extended to and including the 15th day of June, 1903.

CHAS. COWLES TUCKER,
Solicitors for Complainant.
BENJ. CARTER,
Solicitor for Defendant.

Extension of Time to File Transcript.

Filed May 18, 1903.

In the Supreme Court of the District of Columbia.

H. S. CUMMINGS, Adm'r, etc., *vs.* GILBERT MOYERS. } Equity. No. 20802.

On consideration of and in accordance with stipulation of counsel of this day, it is, on this the 16th day of May, 1903, by the court ordered that the time, heretofore limited by stipulation of
653 counsel to this day, for filing transcript of record for appeal of defendant from decree rendered on February 5th, 1903, be and is extended to and including the 15th day of June, 1903.

By the court:

A. B. HAGNER,
Associate Justice.

Order Further Extending Time.

Filed June 12, 1903.

In the Supreme Court of the District of Columbia.

H. S. CUMMINGS, Adm'r,
vs.
GILBERT MOYERS. } Equity. 20802.

On consideration of the motion of defendant filed on the 9th day of June, 1903, to extend the time, beyond the present limit of June 15th, 1903, for filing transcript of record required in the prosecution of defendant's appeal from the decree of the court rendered on February 5th, 1903, and of the affidavit of John R. Young, filed by defendant in support of such motion, it is by the court ordered that the time for filing such transcript be and it is extended to the first day of August 1903.

THOMAS H. ANDERSON, *Justice.*

654 *Order Reviving Cause, &c.*

Filed July 10, 1903.

In the Supreme Court of the District of Columbia.

HORACE S. CUMMINGS, Administrator, &c.,
vs.
GILBERT MOYERS. } Equity. No. 20802.

This day came Charles F. Consaul and Ida M. Moyers and suggested to the court that since the last order was made in this cause the defendant Gilbert Moyers has departed this life. Thereupon, it appearing to the court that the said Charles F. Consaul and Ida M. Moyers have been appointed by this court, holding a probate court, as administrators of the estate of the said Gilbert Moyers, and by consent of the counsel for the plaintiff, it is this 10th day of July 1903, ordered, that the said Charles F. Consaul and Ida M. Moyers, as administrators aforesaid, be substituted as defendants in this cause in lieu of the said Gilbert Moyers.

And thereupon, by consent of the counsel for the respective parties to this suit, it is further ordered that the time for the defendant to file a transcript of the record in this cause in the Court of Appeals upon the appeal of the said Gilbert Moyers heretofore entered herein be, and the same is hereby extended to the 1st day of October next.

THOS. H. ANDERSON, *Justice.*

655 *Defendants' Specification for Record.*

Filed July 18, 1903.

In the Supreme Court of the District of Columbia.

HORACE S. CUMMINGS, Administrator, &c.,
vs.
CHARLES C. CONSAUL and IDA M. MOYERS, Administrators.
} Equity. No. 20802.

To the clerk of the supreme court of the District of Columbia:

Partly in deference to views of counsel for complainant and partly in amplification of and for correction of clerical errors in the specification of original defendant, Gilbert Moyers, filed April 30th, 1903, the present defendants now specify the parts named below of the record in this cause as being necessary and sufficient, with certain stipulations of counsel, for full consideration and examination of all the matters embraced in the present appeal; which parts you are requested to include in the transcript of the record required for such appeal.

1. Bill of complaint, with all exhibits attached, filed September 16th, 1899.
2. Answer of defendant to bill of complaint, with affidavits attached, except those of Joseph A. Blundon and James A. Cahill, filed September 26th, 1899.
3. Joinder of issue on answer, filed September 26th, 1899.
4. Motion for call and order on Secretary of the Treasury for certain information, both filed March 7th, 1900.

656 5. Copy of original papers in United States Treasury, (omitting letter of transmittal) filed March 15th, 1900.

6. Defendants' motion for leave to amend answer, filed May 18th, 1900.
7. Order overruling above motion, filed May 18th, 1900.
8. Defendants' motion for leave to amend answer with affidavit thereto and amendment accordingly filed May 23rd, 1900.
9. Order of court allowing filing of supplemental answer, filed May 24th, 1900.
10. Supplemental answer, filed May 26th, 1900.
11. Motion to strike out portions of supplemental answer, filed June first 1900.
12. Order striking out portions of supplemental answer, filed June 5th, 1900.
13. Joinder of issue on supplemental answer, filed June 5th, 1900.
14. Decree referring case to auditor, filed June 13th, 1900.
15. Motion for appointment of receiver, filed June 12th, 1900.

16. Additional affidavit for appointment of receiver, filed June 14th, 1900.
17. Answer to application for receiver, filed June 20th, 1900.
18. Order appointing receivers, filed June 20th, 1900.
19. Report of receivers, filed June 28th, 1900.
20. Report and petition of receivers, filed January 7, 1901.
21. Order of reference to auditor, filed May 9th, 1901.
22. Auditor's report (omitting testimony attached), filed June 29th, 1901.
23. Order cancelling bond on appeal, filed November 25th,
657 1901.
24. Report of receivers, filed May 24th, 1901.
25. Order for receivers to collect money etc. filed June 3rd, 1902.
26. Motion to extend order of June 3rd, 1902, filed June 6th, 1902.
27. Certified copy of papers from Treasury Department, with letter of transmittal, filed June 7th, 1902.
28. Supplemental report of receivers, filed June 6th, 1902.
29. Report of auditor, filed August 20th, 1902.
30. Defendants' exceptions to report of auditor, filed September
20
19th, 1902.
31. Complainants' exceptions to report of auditor, filed September 20th, 1902.
32. Motion to open report of auditor and remand cause, filed December 11th, 1902.
33. Cross bill, filed December 19th, 1902.
33½. Motion for leave to file cross bill.
34. Decree overruling motions to remand and for filing cross bill and overruling exceptions to report of auditor and confirming the same, filed February 5th, 1903.
35. Petition of George M. Barber to intervene, filed March 3rd, 1903.
36. Order allowing George M. Barber to intervene, filed March 3rd, 1903.
37. Depositions of John C. Scott and others taken by Mason N. Richardson, examiner, one package, with accompanying exhibits (some detached).
38. Deposition- of Horace S. Cummings and others taken by Alexander H. Galt, examiner, one package.
658 39. Depositions of Edward A. Balloch and others taken by J. Arthur Lynham and Mason N. Richardson, examiners, one package.
40. Depositions of defendant and others taken before the auditor, one package with introductory statement of auditor.
41. Defendants' bond for appeal from decree of February 5th, 1903.
42. Order extending time for filing transcript, filed April 13th, 1903.

42½. Report of receivers, filed May 14th, 1903.

43. Order extending time for filing transcript, filed May 18th, 1903.

44. Order extending time for filing transcript, filed June 12th, 1903.

45. Order substituting defendants and extending time for filing transcript to October 1st, 1903, filed July 10th, 1903.

C. C. COLE,
BENJ. CARTER,
Solicitors for Defendants.

659 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, *District of Columbia,* } ss:

I, John R. Young, clerk of the supreme court of the District of Columbia, hereby certify the foregoing pages, numbered from 1 to 658, inclusive, to be a true and correct transcript of the record, as per directions of counsel herein filed, copy of which is made part of this record, in cause No. 20,802 equity, wherein Horace S. Cummings, administrator &c., is complainant, and Charles F. Consaul, *et al.*, are defendants, as the same remains upon the files and of record in said court.

Seal Supreme Court of the District of Columbia.

In testimony whereof, I hereunto subscribe my name and affix the seal of said court, at the city of Washington, in said District, this 15th day of September, A. D. 1903.

JOHN R. YOUNG, *Clerk.*

660 In the Supreme Court of the District of Columbia.

HORACE S. CUMMINGS, Administrator of the Estate of George B. Edmonds, Deceased,
vs.
CHARLES F. CONSAUL and IDA M. MOYERS, Administrators of the Estate of Gilbert Moyers, Deceased. } No. 1361.

Stipulation.

It is stipulated by and between the parties hereto by their respective solicitors that the following are true and accurate copies of certain papers and documents introduced in evidence in this cause before the auditor upon the reference to him made by order of the court passed herein on the 13th day of June 1900, and that the same may be filed in the clerk's office of the Court of Appeals of this

District, and constitute a part of the record in the hearing of said cause on appeal without any certificate by the clerk of the supreme court of the District of Columbia. March 23d, 1904.

CHAS. COWLES TUCKER,
Sol. for Complainant.
C. C. COLE, *Sol'r for the Defendants.*

661 IDENTIFICATION H. B. C. No. 1.

Agreement.

Know all men by these presents, in duplicate, that the undersigned, attorneys of Washington, D. C., are special partners in the prosecution of the cases named in the schedule hereto attached now pending before the United States Court of Claims and the Congress of the United States, the fee agreed to be paid by the client in each case, being the percentum of whatever may be recovered as is stated herein, and the agreement between the undersigned being that each shall have half of said fees and that each shall pay one-half of the expense incident to the prosecution of the same, which expense is not to exceed 2½ % of the amount that may be allowed upon said claims.

And it is hereby agreed and understood that the said Gilbert Moyers shall represent and be associated with me in the prosecution of said claims before the Court of Claims and the Congress of the United States as joint attorney of record.

It is hereby understood and agreed that the undersigned Gilbert Moyers is to advance the expenses incident to the prosecution of said claims.

Witness our hands this 6th. day of February 1888.

GILBERT MOYERS.
GEO. B. EDMONDS.

662 In all of these cases where no fees are marked it is understood and is so stated that the fees I am to receive is fifty per cent.

Josiah L. Bell	3 R. 324 N. C.	(40 per cent.)
David Banks	8 R. 152	
Jas. C. Ballance	4 R. 462	
Eliz. Covington	2 R. 132	
Jas. Covington	5 R. 77	
Wm. R. Clark	3 R. 326	
John Davis Jr.	3 R. 328	
Harvey Durham	4 R. 507	
Margaret Duffey	3 R. 328	(40 per cent.)
Daniel Daugherty	9 R. 146	(40 per cent.)

Jacob Duthit	4 R. 506		
J. S. Dev.	3 R. 308		(40 per cent.)
Israel S. Davis	18 R. 254		
Dorsey S. Deloath	4 R. 506		
Marcellus Edwards	9 R. 147		
Joseph Franklin	3 R. 330		
John J. Flenrrington	3 R. 334		
Jos. N. Feribur	3 R. 330		
Needham G. Gully	3 R. 334		
Wm. Grisson	6 R. 199		
Jas. H. Hyatt	3 R. 334		(33⅓ per cent.)
Stephen S. Howell	2 R. 138		(40 per cent.)
Hicajah Hardesty	7 R. 106		
Marmaduke Howard	4 R. 510		
Thos. D. Harris	4 R. 509		
Freeman Haines	2 R. 137		
Joseph Hays	2 R. 137		
Joseph C. Hogan	2 R. 137		
Arthur J. Hill	1 R. 32		(40 per cent.)
663 Rich W. Johnson	3 R. 334	N. C.	
Joseph J. Jordan	3 R. 336		
Joseph Lawrence	8 R. 257		
Hugh Murdock	6 R. 202		(40 per cent.)
Joseph B. Mann	3 R. 338		(40 per cent.)
Frederick Mathis	3 R. 339		
Hector McMillan	2 R. 142		
Arch. S. McNeil	3 R. 79		
David W. Morton	3 R. 341		
May & Francis Morton	5 R. 80		(40 per cent.)
Levi T. Oglesby	5 R. 160		(40 per cent.)
John F. Phifer	1 R. 32		
Drury Patin	7 R. 109		
Wm. J. Porter	3 R. 344		
Maria P. Royster	2 R. 145		
Joseph A. Smith	2 R. 147		
John S. Sugg	7 R. 111		
Daniel L. Smith	2 R. 146		
John H. Smith	2 R. 146		
Ezekiel Stevens	3 R. 349		
Susan Throgard	3 R. 351		
Nath. Thornton	4 R. 517		
Minerva Lilley	8 R. 261		
Naney T. M. Tooley	6 R. 204		
Nelson T. Thompson	6 R. 204		
Jacob Ulty	3 R. 518		
Thos. Waur	8 R. 262		
Jarvis M. Williams	7 R. 112		
John A. Williams	4 R. 520		

Esidore Cohen	.....	.....	N. C.	
Elzaih Parker	.....	.....	"	
664 Jane M. Anderson	.....	5 R. 52	La.	
Zuline Anyamar	.....	7 R. 73		
Irnia Brown	.....	9 R. 100		
Francis Bondigng	.....	9 R. 99		
Carter Carr	.....	9 R. 101		
Jeff J. Caffery	.....	9 R. 101		
Euphoze Carlin	.....	7 R. 76		
Celestine Danterive	.....	7 R. 77		
Emily V. Glover	.....	9 R. 105		
Josep Gall	.....	9 R. 104		
John Gardiner	.....	7 R. 99		
Jane Hopkins	.....	7 R. 81		(33⅓ per cent.)
Mary E. Jones	.....	9 R. 112		
Johana Meeklas	.....	9 R. 115		
Louise B. Martin	.....	9 R. 114		
Thos. R. Smith	.....	9 R. 117		
Sarah M. Spyker	.....	8 R. 235		
Ezra B. Towne	.....	4 R. 480		
Chesdester Estelte	.....	9 R. 101		
Isaal Bloome	.....	3 R. 284		
Cyntha A. Temple	.....	.....		
John Brewer	.....	6 R. 142	Ark.	(40 per cent.)
Chas. W. Bellnaff	.....	9 R. 26		(40 per cent.)
Henry T. Cate	.....	3 R. 235		
Hugh Dabkins	.....	4 R. 442		
Jas. Daugherty	.....	8 R. 183		
Mary England	.....	3 R. 337		
W. H. Engels	.....	3 R. 239		
Joseph Egener	.....	2 R. 26		
J. J. Johnson	.....	3 R. 245		(40 per cent.)
665 Avey Marrs	.....	4 R. 448		
Andrew Marrs	.....	3 R. 242		(33⅓ per cent.)
E. A. & Mary E. Neely	.....	2 R. 82		
Amanda Pakard	.....	3 R. 244		
Thos. B. Paine	.....	3 R. 244		
Samuel J. Sutton	.....	4 R. 454		
John R. Sembler	.....	2 R. 82		
Lucy N. Calwell	.....	9 R. 28		
Samuel Fitzhugh	.....	3 R. 233		
Eloise T. Beasly	.....	4 R. 438		
Susan Richardson	.....	7 R. 38		
Wm. Francis	.....	2 R. 195	Va.	
Sarah Freeman	.....	4 R. 567		
J. B. Fauber	.....	2 R. 194		(40 per cent.)
Wm. T. Fauber	.....	1 R. 47		(40 per cent.)
Hamson Fauber	.....	2 R. 193		(40 per cent.)
John Funkhouser	.....	2 R. 186		

	Noah P. Gast	2 R. 196	
	Robert Green	4 R. 569	
	Samuel Glick	2 R. 197	
	Emanuel Hoover	4 R. 57	
	John T. Hottel	2 R. 200	
	Wm. Hough	2 R. 200	
	John P. Hanbaker	2 R. 200	
	W. D. Hemp	9 R. 222	(40 per cent.)
	Willis Long	4 R. 576	
	John Lowry	4 R. 577	
	James Lowery	4 R. 577	
	Morgan Layton	4 R. 576	
	Thos. W. Russell	4 R. 584	
	Samuel Roller	4 R. 584	
	Eliz. Richardson	4 R. 583	
666	Thos. H. Robbins	4 R. 584	
	John Sours	4 R. 587	
	Jacob Stover	4 R. 588	
	Annie M. Smith	9 R. 238	
	Leyton A. Tinney	4 R. 590	
	James M. Thompson	4 R. 589	
	H. Walter	4 R. 591	
	Samuel H. Wampler	4 R. 591	
	M. K. Abbot	2 R. 181	Va.
	Rich. Anderson	2 R. 182	(40 per cent.)
	Sam'l A. Beckham	4 R. 558	
	Jesse L. Bryant	2 R. 187	
	Silas Baxley	2 R. 186	
	Oliver Bartley	2 R. 83	
	Solomon Beery	2 R. 184	
	John R. Buchanan	2 R. 187	
	Elias Brinbaker	2 R. 187	
	Benj. Bowman	2 R. 186	
	Wm. E. Carhart	2 R. 188	
	Wm. E. Carhart	6 R. 241	
	Samuel Clive	1 R. 46	
	B. F. Childry	1 R. 45	
	Zath. F. Colbreath	4 R. 561	
	Michael Colwell	3 R. 383	(40 per cent.)
	Joseph Chit	1 R. 45	
	Francis F. Curtis	4 R. 564	
	Peter Clark	2 R. 189	
	Jacob B. Calwell	2 R. 188	(40 per cent.)
	A. Conwell	4 R. 563	(40 per cent.)
	Morgan Coxen	4 R. 563	
	Peter Erlinger	2 R. 192	
667	John Engleman	2 R. 192	(40 per cent.)
	John W. Fletcher	4 R. 567	
	John B. Ferguson	2 R. 194	

Noah Funkhouser	2 R. 194		
Samuel Petzer	2 R. 194		
Noah C. Wenger	4 R. 591	Va.	
Robert Water	4 R. 591		
Curtis Yates	4 R. 592		
Sarah Ambrose	2 R. 182		
Amelia A. Griffith	4 R. 569		
Benton H. Goodloe	2 R. 197		
Craven J. King	3 R. 395		
Sarah Allen	9 R. 208		
Chas. T. Weston	5 R. 123		
Henry Fitzhugh	2 R. 194		(40 per cent.)
Nancy H. Bean	2 R. 184		
Abraham Eichy	4 R. 566		
John Forshil	2 R. 195		
John Baker	9 R. 151	S. C.	
Lucy Breeden	7 R. 113		
Pleas-nt Baker	9 R. 59		
Patrick Brady	3 R. 355		
Thos. Bridgman	2 R. 150		
John Cantter	7 R. 113		
Martin Canfield	3 R. 355		
Ballord D. Dean	9 R. 160		
Joel L. Easterling	2 R. 151		
Pat H. F. Carrgain	2 R. 151		
John G. Grant	2 R. 151		
Daniel Goldfinch	4 R. 522		
P. C. Hamer	2 R. 152		
668 Rich. Jordan	3 R. 356		
Leondas Lowry	9 R. 163		(40 per cent.)
Mary C. Loadholtz	6 R. 207		
R. S. Lipsey	8 R. 264		
May O'Caine	9 R. 163		
Eliz. Slinghton	4 R. 525		
Herbert Smith	2 R. 154		
Phil P. B. Schwaz	2 R. 153		(33⅓ per cent.)
John Sluttery	9 R. 165		
Jaboch N. Townsend	9 R. 165		
M. W. Varning	1 R. 35		
Mary Welch	7 R. 117		
Julia C. Watson	7 R. 117		
Martha Knowles	6 R. 207		
Edward H. Allston	9 R. 158		
Thorogood Stubs	3 R. 358		
Jas. L. Roane	6 R. 208	S. C.	
L. G. Alnet	2 R. 106	Miss.	
John T. Bell	2 R. 107		
Wm. M. Bowles	7 R. 86		
Martha Blanton	5 R. 61		

Zach Belve	5 R. 60		
D. N. Bowder	2 R. 109		
Tenor Bradboy	6 R. 178		
Henry Badon	7 R. 85		
Wm. S. Bunch	7 R. 87	Texas	
Jeff Burnett	2 R. 109		
John A. Browning	2 R. 109		
Chis. Buntine	4 R.		
Hattie Black (now Ladd)	9 R. 122		
Martha Crane	4 R. 486		
Sarah Coyle	9 R. 124		
669 Rowena Clark	9 R. 125		
Drury Couche	7 R. 89		
May Deen	7 R. 69		
Phil. Davis	7 R. 89		
Georgie A. Doyle	9 R. 177		
E. A. Dunn	9 R. 137		
James T. Dumgoale	9 R. 126		
Rchd. Harding	5 R. 66		
Ann Hunt	10 R. 277		
Jas. A. Huston	3 R. 302		
Samuel Herd	8 R. 242		
May A. Harriss	4 R. 489		
Edward Jack	9 R. 131		
H. M. Kerr	9 R. 86		
Harriet Langston	10 R. 272	Miss.	
Jas. H. Lamb	2 R. 116		
Jas. N. Mahan	7 R. 96		
Jadah McKinney	2 R. 117		
Susan S. Merrill	6 R. 118		
Jas. Morrison	7 R. 97		
John McArthur	8 R. 245		
John F. McAlphine	8 R. 245		
Catherine Moseley	6 R. 188		
Samuel A. Miller	3 R. 308		
Joseph H. Martin	9 R. 134		
J. H. Maury	9 R. 135		
John McFarlan (I doubt this)			(40 per cent.)
Wiley Nabor	9 R. 136		
Thos. Nanney	5 R. 71		
Drury Robertson	8 R. 248		
Thos. Ryan	4 R. 498		
Ann M. Ragsdale	9 R. 138		
670 Isaac Raymond	7 R. 99		
Thos. Shelby	5 R. 72		
Rob't Trover	3 R. 318		
Wm. Taliafero	3 R. 318		(40 per cent.)
Volkming, F. W.	4 R. 501		
Wm. Rodenek			

Aulonet Wash	9 R. 143	(40 per cent.)
Chis Weil	6 R. 196	
John White	3 R. 321	(40 per cent.)
Rich. H. Willett	6 R. 196	
Joseph A. Whealberby	3 R. 320	
Wm. H. Whittaker	9 R. 143	Miss.
John W. James	3 R. 340	(40 per cent.)
Albert & Mary E. Jones	2 R. 116	
Andrew Kremer	7 R. 93	
Chas. Krammer	10 R. 272	
Thos. Kidd	5 R. 68	
E. J. Leigh	2 R. 116	
Wm. T. Lamb	8 R. 244	
Alex. K. Leonard	9 R. 133	(33⅓ per cent.)
Harding Patterson	4 R. 495	
M. L. Pol	7 R. 98	
Jacob Prebles	4 R. 495	
J. A. Parker	9 R. 137	
Jacob Surratt	7 R. 101	
Joseph C. Spright	5 R. 74	
Dr. John Young	7 R. 103	(40 per cent.)
Georgia C. Greer	3 R. 29	
John Ech		
May J. Dunn	6 R. 182	
Edwin O. Dunn	6 R. 69	
671 Roderick Williams		
David Brown		
Francis Bobi	6 R. 151	Fla.
F. P. Ferrira	9 R. 54	
John A. Pellicer	9 R. 55	
Andrew J. Pellicer	9 R. 55	
Horatio Woodward	4 R. 557	Texas (40 per cent.)
Rich Butler	9 R. 60	Ga.
Aso Broswell	9 R. 59	
Gadock C. Baker	9 R. 57	
John H. Boag	9 R. 59	
Margaret Bloodworth	9 R. 59	
Eliz. Bough	9 R. 73	
Susan Carrico	9 R. 61	
John Cox	9 R. 64	
Josiah Chambers	1 R. 19	
Thos. Clements	1 R. 19	
S. H. Campbell	9 R. 60	
Jason Cloud	9 R. 62	
James Carder	9 R. 60	
Susan Davis	9 R. 65	
Thos. Dye	9 R. 66	
John Davidson	9 R. 64	
Jane Edgar	2 R. 66	

Jas. E. Elan	9 R. 67		
John Ficker	3 R. 259		
Rebecca D. Fulton	9 R. 69		
Henry Fields	9 R. 86	(33⅓ per cent.)	
Bulenger Graveley	9 R. 70		
Wm. Goddard	9 R. 70		
Peter Lynch	3 R. 267		
672 Patrick Lynch	8 R. 213		
John McKinnie	8 R. 214		
Simon L. Morton	9 R. 84		
John Vale	3 R. 277	(33⅓ per cent.)	
Tilmon Nebbett	9 R. 84		
Thos. W. Quarterman	9 R. 87	Ga.	
Martha Prince	3 R. 274		
Geo. F. Pounder	4 R. 470		
Wm. Ruthe[illegible]rd	9 R. 89		
Nicholas Rawlins	9 R. 87		
Soloman Sheftolt	7 R. 66		
Abraham Sheftolt	5 R. 47		
Christian Ubele	9 R. 94		
M. D. D. Vaughn	2 R. 103		
E. B. D. Vaughn	2 R. 101		
Allen J. Veal	9 R. 94		
Loury Williams	7 R. 72		
Thos. J. Nash	9 R. 95		
Wm. R. Wellborn	9 R. 96		
Eliza Weigh (now Walker)	9 R. 98		
Larkins Witcher	2 R. 163		
—— Von Waldon	9 R. 94		
Martin Wendelker	2 R. 102		
William C. Ballte	1 R. 18	Ga. (40 per cent.)	
Wm. H. Castlen	.....	" " "	
Eliza Castlen	.....	" " "	
Zachariah H. Elliott	10 R. 351	" " "	
Hiram Howe	10 R. 551	" " "	
Jas. Hugalley	.....	" " "	
Benj. Huggard	6 R. 38	" " "	
Fielding F. Matthews	1 R. 23	" " "	
673 Owen L. Woodard	10 R. 350	(40 per cent.)	
Gabriel Parks	5 R. 45	" " "	
Wm. H. Parker	2 R. 97	" " "	
Benj. F. Reeves	6 R. 164	" " "	
Jackson Rush	1 R. 19	" " "	
Pinkering Parson	10 R. 350	" " "	
Jas. M. Middlebrook	1 R. 23	" " "	
Thos. G. Verdine	10 R. 353	" " "	
May Wellaker	1 R. 28	" " "	
Wm. B. Trice	5 R. 49	" " "	
Jas. Trice	5 R. 49	" " "	

Alois Stafford	8 R. 223	"	" "
John W. Stallings	10 R. 350	"	" "
Levi N. Middlebrook	10 R. 353	"	" "
Jordan Lyon	5 R. 42	"	" "
Wilkins W. Jackson	10 R. 350	"	" "
Matthew T. Farley	10 R. 350	"	" "
Andrew W. Stafford	1 R. 27	"	" "
Early Cleveland	5 R. 25	"	" "
Abraham M. Weaver	.....	"	" "
Wm. H. Willis	.....	"	" "
Andrew J. Howard	.....	Ga. (40 per cent.)	
Jas. L. Landon	.....	"	" "
Wm. R. Howe	.....	"	" "
Filmore P. Powell	.....	"	" "
Andrew Zellner	.....	"	" "
Allen W. Fambro.	.....	"	" "
G. W. Bane	4 R. 593	W. Va.	
Moses Baylor	4 R. 593		
Thos. Brown	2 R. 408		
674 Isaac V. Burns	3 R. 408		
John Cook	4 R. 593		
David Coleman	4 R. 593		
Geo. W. Cockrell	4 R. 593		
Phil Gordon	3 R. 408		
John L. Roberts	4 R. 595		
George Shaw	4 R. 409		
Geo. W. Spotts	4 R. 595		
David B. Johnson	9 R. 11	Ala.	
Laura A. Welkins	9 R. 23		
W. F. Hurst	9 R. 11		
Mrs. H. M. Jones	2 R. 116		

675 *Memorandum.*

Manila jacket No. 1 and contents are missing from the files. This jacket and its contents relate to the claim of —— ——.

676 COMPLAINANT'S EXHIBIT NO. 2, CONSISTING OF JACKET AND CONTENTS IN RE CLAIM OF HENRY T. CATE.

Endorsement on manila jacket.

Henry T. Cate.

3 R. 235. $1625.00.

Fayetteville, Washington Co.,
5 dist. Ark.
(2 to 26.)
A. & G.
Eq. # 20802.
Cummings *vs.* Moyers.
"Exhibits 2 to 26."
A. H. Galt, ex'r.
(2.)

Endorsement on inner blue envelope contained in jacket.

Geo. B. Edmonds, (Seal.) (Stamp.)
attorney at law,
1810 K street, N. W. Hon. Sam'l Peel.
Washington, D. C.
Claim $1625.00
3 D R P 235

Henry T. Cate, Fayetteville, Ark.
Feb'y 28/86.—Rec'd returned. P/A F/A &c. Petition executed.
Washington Co.
Return papers.

677 *Fee Agreement.*

This is to certify that I, Henry T. Cate, Fayetteville, Washington Co., State of Arkansas, have engaged Geo. B. Edmonds, of Washington, D. C., as my attorney to prosecute my claim (rejected by the late Claims Commissioners, Washington, D. C.) *claim* against the U. S. Government, and in consideration of his professional services and expenses incurred by him in the prosecution of said claim, I agree to pay him the fee of fifty per cent. of the amount which may be collected thereon, and said fee is hereby made a lien on any draft that may be issued in payment of said claim.

Subscribed this 25th day of February 1886.

HENRY T. CATE.

Witnesses:
J. H. VAN HOOSE.
J. D. WILSON.

678 *Power of Attorney.*

Know all men by these presents, that I, Henry T. Cate of Fayetteville in the State of Arkansas have made, constituted and appointed and by the- presents do make, constitute and appoint Geo. B. Edmonds, of Washington, D. C., my true and lawful attorney, irrevocable, for me and in my name, place and stead, hereby annulling all former powers of attorney or authorizations whatever in the premises, to prosecute my claim against the United States Government for property taken and used by the U. S. Army during the late war, which claim was disallowed by the late Commissioner of Claims, and to furnish any further evidence that may be procured, and necessary, giving and granting to my said attorney, full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises; as fully to all intent- and purposes as I might or could do if personally present at the doing thereof; with full power of substitution and revocation, hereby ratifying and confirming all my said attorney or his substitute may or shall do, or cause to be done by virtue hereof.

In witness whereof I have hereunto set my hand and seal, this 25th day of February, 1886.

HENRY T. CATE.

In presence of—

J. D. WILSON.
WHITING WASHINGTON.

STATE OF ARKANSAS, }
County of Washington, } *ss:*

679 On this 25th day of February 1886 personally came before me Henry T. Cate to me well known as the same person who executed the above power of attorney and acknowledged that he executed the same for the uses and purposes therein mentioned and set forth, and desired the same so certified which is hereby done.

Witness my hand and official seal at Fayetteville Arks. this day and year first above written.

[SEAL.] JAMES H. VAN HOOSE,
Notary Public.

680 COMPLAINANT'S EXHIBIT No. 2.

Power of Attorney.

Filed July 30, 1888.

Power of Attorney.

Know all men by these presents, that I, Henry T. Cate, West Fork P. O., county of Washington in the State of Arkansas, have made, constituted and appointed, and by these presents, do make, constitute and appoint Gilbert Moyers, of Washington, D. C., my true and lawful attorney, irrevocable for me and in my name, place and stead, hereby annulling and revoking all former powers of attorney, or authorizations whatever in the premises, to prosecute my claim against the United States for stores and supplies taken by the Federal forces for their use during the late rebellion, and to prosecute the same before any of the departments of the Government, or before the Congress of the United States and before any officer, commissioner or convention specially authorized to take cognizance of said claim or through any diplomatic negotiations that may be deemed best for the interest of all parties concerned in this matter and to, from time to time, furnish any further evidence necessary, or that may be demanded, giving and granting to my said attorney, full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises, as fully to all intents and purposes as I might or could do if personally present at the doing thereof, with full power of substitution and revocation, and to receipt and sign all vouchers, hereby ratifying and confirming all that my said attorney or his substitute may or shall lawfully do or cause to be done by
681 virtue hereof, and I do hereby authorize any certificates or drafts in payment thereof to be delivered or sent to my said attorney. And in consideration of my said attorney's services and expenses, I do hreby acknowledge a lien in favor of my said attorney on any draft or certificate that may be issued in payment of said claim.

In witness whereof, I hereunto set my hand and seal, this twenty-seventh day of January, eighteen hundred and eighty-eight.

HENRY T. CATE. [SEAL.]

J. F. MOYERS.
B. J. ELDER.

Signature of claimant must be attested by two witnesses.

STATE OF ARKANSAS, }
County of Washington. }

Be it remembered that on this, the 27th day of January, 1888, before the undersigned, a notary public within and for the county and State aforesaid, personally appeared the within named Henry T. Cate with whom I am personally acquainted, and who acknowledged that he executed the foregoing power of attorney for the purposes therein contained.

In witness whereof, I have hereunto set my hand and seal, at office, the day and year last above mentioned.

[SEAL.] JAMES H. VAN HOOSE,
Notary Public. [SEAL.]

Endorsed: Court of Claims. Power of attorney. No. 4931 Cong. Claim of Henry T. Cate, Washington, Ark. for — Filed by Gilbert Moyers, Washington, D. C. Filed July 30, 1888.

682 COMPLAINANT'S EXHIBIT NO. 3, CONSISTING OF JACKET AND CONTENTS IN RE CLAIM OF MRS. JANE A. SUTTON.

Endorsement on manila jacket.

Samuel I. Sutton.

4 R. 457. $6,010.00 / 100.

Colt,
St. Francis Co., Ark.
Mrs. Jane A. Sutton, widow.

(3.)

Endorsement on inner blue envelope contained in jacket.

(Stamp.) (Seal.)

Geo. B. Edmonds,
Attorney at law,
1810 K street, N. W.
Washington, D. C.

Hon. Poindexter Dunn.

Claim $6,010.00 / 100.
4 R. p. 454.

Mrs. Jane A. Sutton, widow, Sam'l I. Sutton, Colt,
St. Francis Co., Ark.

March 28 / 86.—Rec'd—returned P / A. F / A. &c. executed.
Return papers.

683 *Fee Agreement.*

This is to certify that I, Mrs. Jane A. Sutton, widow of Samuel I. Sutton, deceased, of Phillips county, State of Arkansas, have engaged Geo. B. Edmonds, of Washington, D. C., as my attorney to prosecute the case of Samuel I. Sutton, deceased who had a claim against the U. S. Government, and in consideration of his professional services and expenses incurred by him in the prosecution of said claim, I agree to pay him the fee of fifty per cent. of the amount which may be collected thereon, and said fee is hereby made a lien on any draft that may be issued in payment of said claim.

Subscribed this 25th day of March, 1886.

JANE A. SUTTON.

Witnesses:
A. G. WILLIAMS.
MARTHA. H. WILLIAMS.

684 COMPLAINANT'S EXHIBIT No. 3.

COLT, ARKANSAS, *March 25th*, 1885.

Mr. Geo. B. Edmonds, Washington, D. C.

SIR: Your favor of the 20th inst. with petition &- is to hand and noted. I was not aware that my claim had ever been before the Commissioners of Claims and rejected, so I do not know when it was disallowed therefore I cannot fill the petition but will sign it and you can fill it out from the papers on file. My husband's name was Samuell, Imily Sutton, I fill the papers as far as I know, your fees are large but I hope you will be successful in pressing the claim before the commissioners. Please let me know how you progress with the claim after a while and you will oblige yours respectfully,

MRS. JANE A. SUTTON.

N. B.—My home & post office is Colt, St. Francis county, Ark.

685 COLT, ST. FRANCIS COUNTY, ARKS., *March 16th*, 1886.

Mr. Geo. B. Edmonds, Washington, D. C.

SIR: Your favor of the 9th inst. is just to hand having been directed to my husband, deceased who died near Helena, Ark. in 1873 and I am the only representative. My children being all dead also, I thank you kindly for your offer to take charge of my claim. The war left us in quite limited means and I am not able to pay you anything to prosecute my claim but am willing to give you one third of what you can recover of my claim I have been told by prominent gentlemen that my claim was one of the best proven up

that they had seen and only needed some one to see to it for me. In your favor you did not say what you would require out of the claim if collected but I hope you will think my offer a good one as I know of several here who had their claims collected for less, did you find the papers on file all proper & right. My husband had receipts of Federal officers for various amounts of things taken by them & Mr. E. Wheeler had the claims who lived in Little Rock but done nothing but file them that I am aware of. Judge John S. Horner of Helena, Arks. probably can give you some information in refference to the matter, also a Mr. Dorsey Rice of St. Paul, Minn. a near neighbor & a Union man during the war, if you require any more information in regard to the claim it may be possible I can give it to you, please thank Col'n Dunn for his kindness in my interest & oblige

Yours respectfully, MRS. JANE A. SUTTON.

Mrs. Jane A. Sutton, widow of —— Sutton. Colt, St. Francis Co. Ark. Rec'd. 3/20/86. 3/R 247 $1,340.00 4 R 454 6,010.-00/100 March 20/86. Wrote enclosing P/a F/a &c.

686 COMPLAINANT'S EXHIBIT NO. 4, CONSISTING OF JACKET AND CONTENTS IN RE CLAIM OF RICHARD BUTLER.

Endorsement on manila jacket.

Richard Butler.
9 R. 60.
Savannah,
1 dist.

$412.00.
Chatham Co.,
Ga.

(4.)

Endorsement on inner blue envelope contained in jacket.

Geo. B. Edmonds,
attorney at law,
1810 K street, N. W.,
Washington, D. C.

(Stamp.) (Seal.)

Claim $412.00.
9 R. p. 60.
Richard Butler,
Savannah, Ga.
Feby 11/86.—Rec'd returned
P/A F/A Sent back blank petition for signature.
Chatham Co.
Thos. M. Norwood,
1 dist.

687 *Fee Agreement.*

This is to certify that I, Richard Butler, of Savannah in the State of Georgia, have engaged Geo. B. Edmonds, of Washington, D. C., as my attorney to prosecute my claim against the U. S. Government, and in consideration of his professional services and expenses incurred by him in the prosecution of said claim, I agree to pay him the fee of fifty per cent. of the amount which may be collected thereon, and said fee is hereby made a lien on any draft that may be issued in payment of said claim.

Subscribed this 8th day of February 1886.

RICHARD his x mark BUTLER.

Witnesses:

MR. WILLIAM MOERELL.
JOHN G. BUTLER.

688 COMPLAINANT'S EXHIBIT No. 5, CONSISTING OF JACKET AND ITS CONTENTS IN RE CLAIM OF JOHN P. DAVIDSON.

Endorsement on manila jacket.

John P. Davidson,
9 R. 64 $3,260.00
Rome,
Floyd Co. Ga.
7 dist.

(5.)

Endorsement on inner blue envelope contained in jacket.

Geo. B. Edmonds, (Seal.) (Stamp.)
Attorney-at-law,
1810 K street, N. W.,
Washington, D. C. Hon. J. C. Clements.

Claim $3,260.00
9th report p. 64.
John P. Davidson,
Rome, Ga.
Feb'y 13/86—rec'd—returned.
P/A F/A &c. executed. Floyd.

689 *Fee Agreement.*

This is to certify that I, John P. Davidson of Rome, in the State of Georgia, have engaged Geo. B. Edmonds, of Washington, D. C., as my attorney to prosecute my claim against the U. S. Government, and in consideration of his professional services and expenses incurred by him in the prosecution of said claim, I agree to pay him the fee of fifty per cent. of the amount which may be collected thereon, and said fee is hereby made a lien on any draft that may be issued in payment of said claim.

Subscribed this 11th day of February 1886.

JOHN P. DAVIDSON.

Witnesses:

CHAS. D. MORRIS.
A. W. CYA. [SEAL]

690 *Power of Attorney.*

Know all men by these presents, that I, John P. Davidson of Rome, Floyd Co. in the State of Georgia, have made, constituted and appointed, and by these presents do make, constitute and appoint Richard McAllister, Jr., Washington, D. C., my true and lawful attorney, irrevocable, for me and in my name, place and stead, hereby annulling and revoking all former powers of attorney or authorizations whatever in the premises, to prosecute my claim No. 3206 for me before the Southern Claim-Commission or any other tribunals or departments of the United States Government and to receive and receipt for any warrant or draft that may be issued in settlement thereof, and to, from time to time, furnish any further evidence necessary or that may be demanded, giving and granting to my said attorney full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises, as fully to all intents and purposes as I might or could do, if personally present at the doing thereof, with full power of substitution and revocation, and to receipt and sign all vouchers, hereby ratifying and confirming all that my said attorney or h- substitute may or shall lawfully do or cause to be done by virtue hereof.

In witness whereof, I hereunto set my hand and seal, this 18th day of April, eighteen hundred and seventy-seven.

J. P. DAVIDSON. [SEAL.]

Two witnesses who can write:
I. W. PROCTOR.
H. C. JOHNSON.

691 STATE OF GEORGIA, } ss:
County of Floyd, }

Be it known, that on this 18th day of April in the year eighteen hundred and seventy-7. before me, the undersigned, a U. S. commissioner in and for said county and State, personally appeared John P. Davidson to me well known to be the identical person who executed the foregoing letter of attorney, and the same having been first fully read over to h- and the contents thereof duly explained, acknowledged the same to be h- act and deed, and that I have no interest present or prospective in the claim.

In testimony whereof, I have hereunto set my hand and affixed my seal of office, the day and year last above written.

THOS. J. PERRY,
[SEAL.] *U. S. Commissioner.*

If not acknowledged before an officer having an official seal, his official character must be attested by the certificate of the clerk of a court of record of the proper county, under his seal of office, which certificate must be so attached as that the imprint of the seal may appear on this paper. No revenue stamp required.

Endorsed: Power of attorney. No. 3206. Claim of John P. Davidson, Floyd Co., Geo., for —.(Stamp: Commissioners of claims April 21, 1877. Act March 3, 1871.) Filed by B. McAllister, Jr., atty for claimant, Washington, D. C.

692 *Power of Attorney.*

Know all men by these presents, that I, John P. Davidson, of Rome, Floyd county, in the State of Georgia, have made, constituted and appointed, and by these presents do make, constitute and appoint Peter M. Shlibley, my true and lawful attorney, irrevocable, for me and in my name, place and stead, hereby annulling and revoking the power of attorney given to Richard McAllister, Jr., and confirming the power of attorney given to Peter M. Sheibley, March 27th, 1874. The said power of attorney given to the said Sheibley in view of the decease of St. John B. L. Skinner and also recognizing the said Sheibley as the correspondent and attorney of said Skinner.

I hereby further authorize that the draft to be issued for my claim No. 3206 be given to my said attorney Peter M. Sheibley.

I furthermore agree to from time to time, furnish any further evidence necessary or that may be demanded, giving and granting to my said attorney, full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises, as fully to all intents and purposes as I might or could do, if personally present at the doing thereof,

with full power of substitution and revocation, and to receipt and sign all vouchers, hereby ratifying and confirming all that my said attorney or his substitute may or shall lawfully do or cause to be done by virtue hereof.

In witness whereof, I hereunto set my hand and seal, this 30th day of July, eighteen hundred and seventy-seven.

J. P. DAVIDSON. [SEAL.]

Two witnesses who can write.

CHAS. J. WARNER.
J. M. SPILLOCK.

693 STATE OF GEORGIA, } ss:
County of Floyd, }

Be it known, that on this 3rd, day of August in the year eighteen hundred and seventy-seven before me, the undersigned, a clerk of the superior court in and for said county and State, personally appeared J. P. Davidson, to me well known to be the identical person who executed the foregoing letter of attorney, and the same having been first fully read over to him and the contents thereof duly explained, acknowledged the same to be his act and deed, and that I have no interest present or prospective in the claim.

In testimony whereof, I have hereunto set my hand and affixed my seal of office, the day and year last above written.

[SEAL.] A. E. ROSS, *Clk S. C. F. C.*

If not acknowledged before an officer having an official seal, his official character must be attested by the certificate of the clerk of a court of record of the proper county, under his seal of office, which certificate must be so attached as that the imprint of the seal may appear on this paper. No revenue stamp required.

Endorsed: Power of attorney. No. 3206. Claim of John P. Davidson, Rome, Ga. for quarter master & commissary stores. (Stamp: Commissioner of claims Mar. 6. 1878. Act March 3, 1871.) Filed, by P. M. Sheibley, Rome, Ga. M'ch 6/78 Att'y notified.

694 Filed February 16, 1889.

Power of Attorney.

Know all men by these presents, that I, John P. Davidson of Floyd county in the State of Georgia have made, constituted and appointed, and by these presents do make, constitute and appoint Peter M. Sheibley my true and lawful attorney for me, and in my name, place and stead, to prosecute my claim against the United

States Government for quartermaster and commissary stores, now pending before the commissioners of claims and filed, No. 3206, by St. John B. L. Skinner, June 27, 1871, purposes aforesaid in view of the decease of St. J. B. L. Skinner, the att'y of record, I do hereby grant unto my said attorney full power and authority to do and perform all and every act whatsoever and requisite necessary to be done in and about the premises, as fully to all intents and purposes as I might or could do if personally present, with full power of substitution and revocation, hereby ratifying and confirming all that my said attorney shall lawfully do or cause to be done by virtue hereof, hereby annulling and revoking all former powers of attorney or authorizations whatever in the premises.

In witness whereof, I have hereunto set my hand and seal the — day of March, in the year of our Lord one thousand eight hundred and seventy four.

J. P. DAVIDSON. [SEAL.]

Two witnesses:

W. M. GRAY.
H. J. JOHNSON.

695 COUNTY OF FLOYD, } ss:
State of Georgia, }

Personally appeared before me the subscriber a notary public for said State and county the above-named Jno. P. Davidson to me well known, and acknowledged the foregoing letter of attorney to be his free and voluntary act and deed for the purposes therein set forth.

Given under my hand on the 27th day of March, 1874, at Rome, Ga.

THOS. J. PERRY,
[SEAL.] *Notary Public.*

Endorsed: Power of attorney from John P. Davidson, Rome, Ga. to P. M. Sheibley. Quarter master & commissary stores.

696 ROME, GA., *March* 3, 1878.

Hon. A. O. Aldis, president claims com., Washington, D. C.

SIR: Enclosed find powers of attorneys given me by John P. Davidson, dated respectively March 27, 1874 & July 30, 1877.

I was the correspondent of nearly all cases filed before you by Gen. St. J. B. L. Skinner from this county of Floyd, hence since his decease and that of his counsel George S. Parker, I claim the right to control them. Therefore, I now submit claim No. 3206, John P. Davidson, Floyd County, Ga., to your consideration.

Respectfully, P. M. SHEIBLEY.

697 Forsyth & Hoskinson, attorneys at law, 77½ Broad street.

ROME, GA., *July* 2, 1886.

Geo. B. Edmonds, Esq., Washington, D. C.

DEAR SIR: Your circular letter received, I am willing for you to take charge of my claim, and prosecute the same for me.

If necessary to execute papers giving any further authority, send them to me.

Let us agree however in advance the compensation you are to receive I am not in condition to expend any money on the matter and prefer that you take part of the recovery, for your fees. I am willing to allow what is usual in such cases.

Yours very truly, JOHN P. DAVIDSON.

Endorsed: John P. Davidson, Rome, Ga. Rec'd 2/4 '86 9 R. 74 $3,260.00 Feb'y 6/86 Wrote enclosing P/A F/A &c.

698 Forsyth & Hoskinson, attorneys at law, 77½ Broad street.

ROME, GA., *May* 29, 1886.

Mr. Geo. B. Edmonds, att'y at law, Washington, D. C.

DEAR SIR: I sent you power of att'y as requested in Feb'y last, have never heard from you, please let me know if you received it, and if anything has been done with my claim; I would be glad to know as near as you can say when the claim is likely to be passed upon, and what in your opinion the chances are for recovery.

Yours very truly, J. P. DAVIDSON.

Endorsed: May 31/86. Wrote stating that I hoped to be able to write him that his claim was again in court & enclose him a petition to the court for execution.

699 COMPLAINANT'S EXHIBIT NO. 6, CONSISTING OF JACKET AND CONTENTS IN RE CLAIM OF CHRISTIAN UBELE.

Endorsement on manila jacket.

Christian Ubele,
9 R. 94 Savannah, Ga. $1,290.00/100.
Chatham Co.,
5 dist.

(6.)

Endorsement on inner blue envelope contained in jacket.

Geo. B. Edmonds, (Seal.) (Stamp.)
Attorney at law,
1810 K street, N. W., Thos. M. Norwood,
Washington, D. C. 1 dist.

Claim $1,290.
9 R. p. 94 Christian Ubele,
Savannah, Ga.

Feb'y 28/86. Rec'd—returned
P/A F/A &c. petition executed.
Chatham Co.
Return papers.

700 *Fee Agreement.*

This is to certify that I, Christian Ubele of Savannah, in the State of Georgia have engaged Geo. B. Edmonds, of Washington, D. C., as my attorney to prosecute my claim against the U. S. Government, and in consideration of his professional services and expenses incurred by him in the prosecution of said claim, I agree to pay him the fee of fifty per cent. of the amount which may be collected thereon, and said fee is hereby made a lien on any draft that may be issued in payment of said claim.

Subscribed this 26th. day of February 1886.

[SEAL.] CHRISTIAN UBELE.

Witnesses:

L. B. [illegible]NDRES.
M. F. [illegible]OLINA,
J. P., C. C., Ga.

701 COMPLAINANT'S EXHIBIT No. 6.

SAVANNAH, GA., *Feb. 15th*, 1886.

DEAR SIR: I received your kind letter, and I want to let you now that I want to Brush the case if you take it on hand.

Money I have not got, but if you gain the case which is a just one you can take your fee of it I can bring some of the best citicians for witness as you want.

Write me as soon as possible.

Respectfully your CHRISTIANS UBELE.

Endorsed: Christian Ubele, Savannah, Ga. Rec'd 2/186. 9/R. 94 $1,290.00 Feb'y 24/86. Wrote enclosing P/A F/A &c. Good.

702 COMPLAINANT'S EXHIBIT No. 7, CONSISTING OF JACKET AND CONTENTS IN RE CLAIM OF WILLIAM R. WELLBORN.

Endorsement on manila jacket.

Wm. R. Wellborn,
9 R. 96
Madison
Morgan, Co., Ga.
8 dist.

$565.00/100

(7.)

Endorsement on inner blue envelope contained in jacket.

Geo. B. Edmonds,
Attorney-at-law,
1810 K street, N. W.
Washington, D. C.

(Seal.) (Stamp.)
Seabom (Reese 8 dist.)

Claim $565.00
9th. R. p. 96.
Wm. R. Wellborn, Madison, Ga.
Feb'y 24/86—Rec'd—returned
P/A F/A & petition execution,
Morgan Co.
Return papers.

703 *Fee Agreement.*

This is to certify that I, Wm. R. Wellborn, of Madison in the State of Georgia, have engaged Geo. B. Edmonds, of Washington, D. C., as my attorney to prosecute my claim against the U. S. Government, and in consideration of his professional services and expenses incurred by him in the prosecution of said claim, I agree to pay him the fee of fifty per cent. of the amount which may be collected thereon, and said fee is hereby made a lien on any draft that may be issued in payment of said claim.

Subscribed this 22nd. day of February, 1886.

[SEAL.] W. R. WELLBORN.

Witnesses:
W. A. ALMAND.
C. W. BALDWIN,
Clerk Superior Court, Morgan Co., Ga.

704 COMPLAINANT'S EXHIBIT NO. 7.

MADISON, MORGAN CO., Oct. *Feb.* 10, 1886.

Mr. Geo. B. Edmonds.

DEAR SIR: Having received yours of the 2, i hasten to reply I can only say do you as think best for me as I am a poor and needy man I supose you are acquainted with the facts of my claims as you have examined them. Take the case and colect my claim if you can pay yourself for services rendered if you obtain or colect the claim; remit the remainder to me

Yours truly, W. R. WELLBORN.

P. S.—If you wish anything more concerning my claim let me hear from you i will inform you.

Endorsed: Wm. R. Wellborn, Madison, Ga. Rec'd 2/12/86. 9 R. 96 $565.00 Feb'y 15/86. Wrote. enclosing P/A F/A &c.

705 MADISON, GA., *May* 19/86.

Mr. Geo. B. Edmonds.

DEAR SIR: Having given you power to prosecute my case I would like very much to hear from you. I have writen several letters to you and have never received an answer, as I would like to hear about my claim; what success you have had; and to save further investigation you will please answer at once.

Yours respt. WM. R. WELLBORN,
Madison, Ga.

Endorsed: Wm. R. Wellborn, Madison, Ga. Rec'd 5/24/86. Wrote May 29/86 that as soon as anything of interest transpires will write him & we will have to be patient.

706 COMPLAINANT'S EXHIBIT NO. 8, CONSISTING OF JACKET AND CONTENTS IN RE CLAIM OF JASPER GALL.

Endorsement on manila jacket.

Jasper Gall,
9 R. 104 $880.
New Iberia
Iberia parish, La.

(8.)

Endorsement on inner blue envelope contained in jacket.

(Stamp.) (Seal.)

Geo. B. Edmonds,
Attorney at law,
1810 K street, N. W.
Washington, D. C.

Hon. Edward J. Gay.

Claim 880
9 R. p. 104.

Jasper Gall,
New Iberia,
Iberia par. La.

April 19/86 Rec'd returned P/A F/A &c. executed.
Return papers.

707 *Fee Agreement.*

This is to certify that I, Jasper Gall, of Iberia parish in the State of Louisiana have engaged Geo. B. Edmonds of Washington, D. C., as my attorney to prosecute my claim against the U. S. Government, and in consideration of his professional services and expenses incurred by him in the prosecution of said claim, I agree to pay him the fee of fifty per cent. of the amount which may be collected thereon, and said fee is hereby made a lien on any draft that may be issued in payment of said claim.

JASPER GALL.

Subscribed this 16th day of April 1886.

A. J. WAKEFIELD,
[SEAL.] *Dist. Clerk & Ex-officio Notary Public.*

Witnesses:

CHAS. A. JUDICE.
L. A. PELLUM.

708 *Power of Attorney.*

Know all men by these presents, that I, Jasper Gall, of Iberia parish, in the State of Louisiana have made, constituted and appointed, and by the- presents do make, constitute and appoint Geo. B. Edmonds, of Washington, D. C., my true and lawful attorney, irrevocable, for me and in my name, place and stead, hereby annulling all former powers of attorney or authorizations whatever in the premises, to prosecute my claim against the United States Government for property taken and used by the U. S. Army during the late war, which claim was disallowed by the late commissioners of claims in the year 1879, and to furnish any further evidence that may be procured, and necessary, giving and granting to my said attorney full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises, as fully to all intents and purposes as I might or could do if personally present at the doing thereof; with full power of substitution and revocation, hereby ratifying and confirming all my said attorney, or his substitute may or shall do, or cause to be done by virtue hereof.

In witness whereof I have hereunto set my hand and seal this 16th day of April, 1886.

JASPER GALL.

A. J. WAKEFIELD,

[SEAL.] *District Clerk and Ex-officio Notary Public.*

In presence of—
CHAS. A. JUDICE.
L. A. PELLUM.

709 COMPLAINANT'S EXHIBIT No. 8.

NEW IBERIA, *March 3d*, 1886.

To Geo. B. Edmonds, Esq., Washington, D. C.

D'R SIR: Yours Feb'y came to hand today and now hasten to answer. You can take charge of the claim I have provided you take your fee out of what you collect. I do not recollect how much the amount of my claim but it was a verry reasonable one for the amount of damage I sustained You may prove if you wish, any reference of my conduct during that unfortunate war. I can refer you to Doct. A. Duperier of this place who is well acquainted with me and my position during the war and the whole time.

I remain very respectfully yours, JASPER GALL.

Endorsed: Jasper Gall, New Iberia, Iberia parish La. Rec'd 3/7/86. 9 R. 104 $880. March 13/86 wrote endorsing P/A F/A &c. Apr. 10/86 return of papers asked. G.

710 COMPLAINANT'S EXHIBIT No. 9, CONSISTING OF JACKET AND CONTENTS IN RE CLAIM OF PAGE BRABOY.

Endorsement on manila jacket.

Trenor Braboy,
6 R. 178 $4,528.00
Rocky Springs, Hines Co. Miss.
Page Braboy, son
7 dist. (9.)

Endorsement on inner blue envelope contained in jacket.

Geo. B. Edmonds, (Seal.) (Stamp.)
Attorney at law,
1810 K street, N. W. Hon. E. Barksdale.
Washington, D. C.
Claim $4,528
6 # R. p. 178.
Page Braboy for his father Tenor Braboy, dec'd.
Rocky Springs,
Hines Co. Miss.
May 8/86 rec'd. Returned P/A F/A &c. executed.
Return papers.

711 *Fee Agreement.*

This is to certify that I, Page Braboy, son & heir of Tenor Braboy, deceased, formerly of Clairborn county, Mississippi have engaged Geo. B. Edmonds of Washington, D. C., as my attorney to prosecute the case of Tenor Braboy deceased, who had a claim against the U. S. Government, and in consideration of his professional services and expenses incurred by him in the prosecution of said claim, I agree to pay him the fee of fifty per cent. of the amount which may be collected thereon, and said fee is hereby made a lien on any draft that may be issued in payment of said claim.

Subscribed this 4th. day of May, 1886.

PAGE BRABOY.

Witnesses:

WILLIAM M. ALEXANDER.
W. W. ALEXANDER.

712 COMPLAINANT'S EXHIBIT No. 10, CONSISTING OF JACKET AND CONTENTS IN RE CLAIM OF MARY J. DUNN.

Endorsement on manila jacket.

Mary J. Dunn,
6 R. 182 $1,980.00/100
Tupelo, Lee Co. Miss.
J. W. Thomas, executor. 1 dist.
Cong. No. 1723.
(10.)

Endorsement on inner blue envelope contained in jacket.

Geo. B. Edmonds, (Seal.) (Stamp.)
Attorney at law,
1810 K street, N. W.,
Washington, D. C. Hon. Jno. Mallen.
Claim $1,980.
6 R. p. 182. J. W. Thomas, ex't'r.
Mary J. Dunn,
May 10/86. rec'd. Tupelo, Lee Co.
Returned P/A F/A executed. Miss.
Return papers.

713 TUPELO, MISS., *April 12th*, 1886.

Mr. G. B. Edmonds.

DEAR SIR: Your letter of April 3rd to hand, and contents noted. In reply my mother has been dead for nearly five years. If you think you can do anything for the heirs of course they would like to have something for our lost and destroyed property. But don't want to be run to any expense for nothing, you can see what you can do with the claims, and advise me.

Respectfully, J. W. THOMAS,
Exect. of M. J. Dunn Estate.

Endorsed: J. W. Thomas, ex'r of Mary J. Dunn—Tupelo, Lee Co. Miss. Rec'd 4/15/86. 9 R. 182 $1,980.00 G. April 30/86 Wrote enclosing P/A F/A &c.

714 COMPLAINANT'S EXHIBIT No. 11, CONSISTING OF JACKET AND CONTENTS IN RE CLAIM OF JOHN EHS.

Endorsement on maniia jacket.

John Ehs,
Jackson, Hinds Co. Miss.
J. M. H. Martin, correspondent.
7 dist.

715 COMPLAINANT'S EXHIBIT No. 11.

Power of Attorney.

Know all men by these presents, that I, John Ehs, a resident of the city of Jackson, of the county of Hinds in the State of Mississippi, have made, constituted and appointed, and by these presents, do make, constitute and appoint George B. Edmonds of Washington city, D. C., my true and lawful attorney, irrevocable for me and in my name place and stead, hereby annulling and revoking all former powers of attorney or authorizations whatever in the premises, to prosecute his claim for supplies taken by the U. S. Army during the late war, which is now pending before the Court of Claims and to, from time to time, furnish any further evidence necessary or that be demanded, giving and granting to my said attorney, full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises, as fully to all intents and purposes as I might or could do, if personally present at the doing thereof, with full power of substitution and revocation, and to receipt and sign all vouchers, hereby ratifying and confirming all that my said attorney or his substitute may or shall lawfully do or cause to be done by virtue hereof.

In witness whereof, I hereunto set my hand and seal, this 14th day of October, eighteen hundred and eighty-six.

his
JOHN x EHS. [SEAL.]
mark.

Two witnesses who can write:
J. M. H. MARTIN.
MAGGIE EHS.

716 STATE OF MISSISSIPPI, }
County of Hinds, } ss:

Be it known, that on this 14 day of October in the year eighteen hundred and eighty six, before me, the undersigned a clerk of the circuit court in and for said county and State, personally appeared John Ehs to me well known to be the identical person who executed the foregoing letter of attorney, and the same having been first fully read over to him and the contents thereof duly explained, acknowledged the same to be his act and deed, and that I have no interest present or prospective in the claim.

In testimony whereof, I have hereunto set my hand and affixed my seal of office, the day and year last above written.

W. N. POTTER, *Clerk,*
[SEAL.] By W. J. BROWN, JR., *D. C.*

If not acknowledged before an officer having an official seal, his official character must be attested by the certificate of the clerk of a court of record of the proper county, under his seal of office, which certificate must be so attached as that the imprint of the seal may appear on this paper. No revenue stamp required.

717 Office of the New Mississippian, a representative newspaper of Mississippi.

JACKSON, MISS., *Feb. 12th*, 1887.

Geo. B. Edmonds, Washington, D. C.

DEAR SIR: Nearly one year ago I sent you power of att'y &c. in my old war claim the claim for tobaco taken by U. S. Army & rejected by So. Claims Comn. since when I have not heard from it or you. Not even an acknowledgment of the receipt of said papers.

Will you please inform me of the present condition of said claim? Whether or not any progress has been made in its prosecution? &c. And oblige—Hoping to hear from you soon, I remain,

Yours truly, J. M. H. MARTIN.

P. S.—Find enclosed, petition & power of att'y of Mr. John Ehs. (pronounced Ace) which he requests me to forward.

718 *Memorandum.*

Jacket No. 12 and contents are missing from the files.
These relate to claim of —— ——.

719 COMPLAINANT'S EXHIBIT No. 13, CONSISTING OF JACKET AND CONTENTS IN RE CLAIM OF MRS. ANNA HUNT.

Endorsement on manila jacket.

Mrs. Anna Hunt,
10 R. 272 $51,940.00/100
Rodney, Jefferson Co.,
Miss.

(Correspondence with H. E. Newton.)
7 dist.

(13.)

Endorsement on inner blue envelope contained in jacket.

Geo. B. Edmonds, (Seal.) (Stamp.)
Attorney at law,
1810 K street, N. W.
Washington, D. C. Hon. E. Barksdale.

Claim $51,940.
10 R. p. 272
(Correspondence with H. E. Newton)
Mrs. Anna Hunt,
Rodney, Jefferson Co. Miss.

June 5/86—Rec'd. Returned P/A F/A &c. executed. Return papers.

720 *Fee Agreement.*

This is to certify that I, Mrs. Anna Hunt, of Jefferson county, Mississippi have engaged Geo. B. Edmonds of Washington, D. C., as my attorney to prosecute my claim against the U. S. Government, and in consideration of his professional services and expenses incurred by him in the prosecution of said claim, I agreed to pay him the fee of fifty per cent. of the amount which may be collected thereon, and said fee is hereby made a lien on any draft that may be issued in payment of said claim.

Subscribed this 1st. day of June, 1886.

ANNA HUNT.

Witnesses:

O. H. McGINTY.
R. HARRISON.

721 WASHINGTON, D. C., *Sept. 8th*, 1879.

Mrs. Anna Hunt, Huntley, Miss.

DEAR MADAM: Your letter of inquiry of the 30th. ult. received, and I hasten to reply. I am glad, after long, long delay to tell you that affidavits of which you speak, that of Dr. Coleman, relative to the death of your son, and of Harwood in denial, &c. came to hand, and were at once utilized in the make up of the case, which *since*, I have fully briefed and submitted, I see by reference to my docket, that Dr. C.'s affidavit was received on the 7th. and Harwood's on the 10 of August, and on the 21st of the same month my brief was filed, & the case submitted for the final decision of the commissioners. They will be in session again in a few weeks; but, we shall not know what their decision is until early in Dec. next, after they make their report to Congress.

The case was very fairly made out, but not so well as it *should* have been from the material with which to do it. The witnesses generally agreed in their statements as to the taking of the property, but differed in some respects as to its location on which plantation of the *three*, which it was alleged in the petitions, it was on, at the time the U. S. forces took it.

But, withal, I look in *confidence* for a favorable result. I sincerely think your claim *ought* to be allowed, and all I can do to accomplish that result *shall* be done, and with the—

Highest respect, I am truly yours,

H. H. WILLARD.

722 COMPLAINANT'S EXHIBIT No. 13.

"HUNTLEY," *May 7th*, 1886.
(Near Rodney, Miss.)

DEAR SIR: Your circular letter of 30th. inst. to Mrs. Anna Hunt is received. She requests me to reply to it.

In case the claim referred to should be given you to prosecute it must be with the distinct understanding that no money will be supplied for that purpose by any of the parties here who have an interest in same.

You must state beforehand what your percentage as charges would be on the am't recovered.

Are you connected in any way with the parties in whose hands the claims was previously put?

It is not meant by this letter to give authority to prosecute the claim.

Mrs. Hunt has now living two children, male and female, the latter being my wife.

Very truly y'rs, A. E. NEWTON.

To G. B. Edmonds, Esq., Washington, D. C.

P. S.—You can address Mrs. Hunt (or myself at Rodney, Miss.)

Endorsed: Mrs. Anna Hunt by A. E. Newton. Rodney, Jefferson Co. Miss. Rec'd 5/11/86. 10 R. 272 $51,940, or G. May 22/86, wrote, enclosing P/A F/A &c.

723 NEAR RODNEY, MISS., *June 1st*, 1886.

DEAR SIR: Mrs. Hunt has concluded to turn the matter of the claim over to you, and forward necessary papers for the purpose signed before proper officer &c. &c.

Her impression is that probably the previous testimony did not state the place or places from which the property was taken and that this may have militated against her suit. If this be so, and you think it material, the information can be furnished, if you will give list of property &c.

V'y truly y'rs, A. E. NEWTON.

To G. B. Edmonds, Esq., Washington, D. C.

724 EXHIBIT H. A. C. No. 4.

HUNTLEY, *Sep. 29th*, '86.

Mr. G. B. Edmonds:

The delay in answering your letter has been on account of the absence of my son—As I wanted to get his advice about some matters concerning the claim. He says that Messrs. Adam & Speed of Vicksburg have all the papers which contain the necessary information and duly sworn to. The amount of property taken—its value—the names of parties who know of taking of the property & of those to prove the loyalty of my husband. Mr. Willard of Washington may be able to give you some assistance. If this does not prove satisfactory write again.

With good wishes, I am
Truly,

ANNA HUNT.

Address Mrs. Geo. Hunt, Rodney, Miss.

725 COMPLAINANT'S EXHIBIT No. 14, CONSISTING OF JACKET AND CONTENTS IN RE CLAIM OF HATTIE E. LADD.

Endorsement on manila jacket.

Hattie E. Ladd, (formerly Hattie E. Black).
9 R. 122 $2,445.00/100.
Oakland, Yallabusha Co., Miss.
4 dist.

(14.)

Endorsement on inner blue envelope contained in jacket.

(Seal.) (Stamp.)

Geo. B. Edmonds,
Attorney at law,
1810 K street N. W.,
Washington, D. C. Hon. F. G. Barry.

Claim $2,445.
9 R. p. 122.

Mrs. H. E. Ladd formerly
" Hattie E. Black, Oakland, Miss.
Yallabusha Co.

May 1/'86.—Rec'd returned P/A F/A &c. executed.
Return papers.

726 *Fee Agreement.*

This is to certify that I, Mrs. Hattie E. Ladd, formerly Mrs. Hattie E. Black, Yallabusha county, Mississippi have engaged Geo. B. Edmonds, of Washington, D. C., as my attorney to prosecute my claim against the U. S. Government, and in consideration of his professional services and expenses incurred by him in the prosecution of said claim I agree to pay him the fee of fifty per cent. of the amount which may be collected thereon, and said fee is hereby made a lien on any draft that may be issued in payment of said claim.

Subscribed this 28th day of April, 1886.

HATTIE E. LADD.

Witnesses:

W. K. BLACK.
THOMAS LADD.

727 *Power of Attorney.*

Filed May 1, 1891, Court of Claims.

Know all men by these presents, that I, Hattie E. Ladd, formerly Hattie E. Black of Yallabusha county, in the State of Mississippi have (torn) constituted and appointed, and by the- presents do make, constitute and appoint Geo. B. Edmonds, of Washington, D. C., my true and lawful attorney, irrevocable, for me and in my name, place and stead, hereby annulling all former powers of attorney or authorizations whatever in the premises, to prosecute my claim against the United States Government for property taken and used by the U. S. Army during the late war, which claim was disallowed by the late Commissioners of Claims in the year 1879 and to furnish any further evidence that may be procured, and necessary, giving and granting to my said attorney full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises, as fully to all intent- and purposes as I might or could do if personally present at the doing thereof; with full power of substitution and revocation, hereby ratifying and confirming all my said attorney or his substitute may or shall do, or cause to be done by virtue hereof.

In witness whereof I have hereunto set my hand and seal, this 28th day of April, 1886.

HATTIE E. LADD.

In presence of—

W. K. BLACK.
THOS. LADD.

728 *Claim of Hattie E. Ladd.*

Business confidential.

George B. Edmonds (late law officer, U. S. Land Office), 1810 K street N. W.

WASHINGTON, D. C., *Jan.* 21, 1886.

DEAR SIR: Having had occasion to examine some of the claims rejected by the late Southern Claims Commission, I conclude that many were rejected wrongfully. Having undertaken to prosecute some of these cases anew, I suggest that yours be included.

I do not promise absolute success, but I think there is such good reason to hope for it, that I am willing to make the trial. I think I have exceptional advantages in knowing about these cases, and alike facilities for the successful prosecution of the same.

You will, perhaps not wish to expend money upon my faith on the success of your case, if so; I am willing to prosecute it upon the understanding that if I do not recover I shall have no compensation.

Please advise me at once in the enclosed envelope relative to the matter.

Respectfully yours, GEO. B. EDMONDS.

Thinking you might wish references, I submit by permission the following:

Hon. Frank B. Conger, postmaster, Washington, D. C., also the president of the Board of Commissioners, of District of Columbia.

—over—

729 DEAR SIR: In accordance with the circular on opposite side, and with the understanding that I am to be put to no additional expense, and that all the papers have been made out and are where you can get possession of them, for I do not know now where I can find the witnesses. I agree to give you possession or full controll of the case, you are to deduct your fee from what you make by the prosecution or no fee.

Yours &c., MRS. H. T. LADD,
Formerly Mrs. A. J. Black. Miss Hattie Keith.

Endorsed: Mrs. H. T. Ladd, formerly Mrs. Hattie E. Black Oakland. Yallabusha Co. Miss. Rec'd 4/24/86. 9 R. 122 $2,445.00 G. Some doubts about the property being hers. April 25/86 wrote enclosing P/A F/A &c.

730 COMPLAINANT'S EXHIBIT No. 15, CONSISTING OF JACKET AND CONTENTS IN RE CLAIM OF J. H. MAURY.

Endorsement on manila jacket.

J. H. Maury,
9 R. 135. $3,460.
Port Gibson,
Clairborn Co.,
Miss.
Mrs. E. M. Harding,
Daughter.
7 dist.

(15.)

Endorsement on inner blue envelope contained in jacket.

Geo. B. Edmonds,
Attorney at law,
1018 K street N. W., Hon. E. Barksdale.
Washington, D. C.

Claim $3,460.
9 R., p. 135.
Mrs. E. M. Harding daughter of James H. Maury, dec'd.
Port Gibson, Clairborn Co., Miss.
April 24/86. Rec'd—returned P/A F/A, &c., executed.

731 *Fee Agreement.*

This is to certify that I, Mrs. E. M. Harding, daughter & heir of J. H. Maury, deceased, of Clairborn county, Mississippi have engaged Geo. B. Edmonds of Washington, D. C., as my attorney to prosecute the case of J. H. Maury, deceased, claim against the U. S. Government, and in consideration of his professional services and expenses incurred by him in the prosecution of said claim, I agree to pay him the fee of fifty per cent. of the amount which may be collected thereon, and said fee is hereby made a lien on any draft that may be issued in payment of said claim. It is agreed and understood I am not to be at any expense herein.

Subscribed this 20th. day of April, 1886.

MRS. E. M. HARDING.

Witnesses:
J. M. HARDING.
S. R. BERTRUM.

732 PORT GIBSON, *April 9th*, 1886.

Mr. Geo. B. Edmonds:

My father J. H. Maury is dead—I am one of his heirs, and am willing for you to proceed, in the collection of his Government claim, provided, it will not cost me anything.

Please write and let me know your terms.

Respectfully, MRS. E. M. HARDING,
Daughter of J. H. Maury, Dec'd.

$3,460.

733 COMPLAINANT'S EXHIBIT No. 16, CONSISTING OF JACKET AND CONTENTS IN RE CLAIM OF WILSON WILLIAMS.

Endorsement on manila jacket.

Wilson Williams, adm'r of Roderick Williams,
3 R.
La Fayette Co.,
Miss.
2 dist.
(16.)

Endorsement on inner blue envelope contained in jacket.

(Stamp.) (Seal.)

Geo. B. Edmonds,
Attorney at law,
Corcoran building,
Washington, D. C.

Roderick Williams, deceased,
By Nelson Williams, his adm'r.
La Fayette Co.,
Miss.

734 *Fee Agreement.*

This is to certify that I, Wilson Williams, administrator of Roderick Williams deceased, of La Fayette Co., Mississippi have engaged Geo. B. Edmonds, of Washington, D. C., as my attorney to prosecute the case of the late Roderick Williams, deceased, who had a claim against the U. S. Government, and in consideration of his professional services and expenses incurred by him in the prosecution of said claim, I agree to pay him the fee of fifty per cent. of the amount which may be collected thereon, and said fee is hereby made a lien on any draft that may be issued in payment of said claim.

Subscribed this 16th day of October, 1886.

W. WILLIAMS.

Witnesses:
JNO. F. BROWN.

735 COMPLAINANT'S EXHIBIT NO. 17, CONSISTING OF JACKET AND CONTENTS IN RE CLAIM OF D. S. DELOATCH.

Endorsement on manila jacket.

Dorsey S. Deloatch,
4 R. 506. $2,955.00.
Jackson,
Northampton Co., N. C.
W. R. Deloatch Son.

(17.)

Endorsement on inner blue envelope contained in jacket.

Geo. B. Edmonds, (Seal.) (Stamp.)
Attorney at law,
1810 K street, N. W.,
Washington, D. C. James E. O'Hara, 2 dist.

Claim $2,955.
4 R. p. 506.
W. R. Deloatch, son of Dorsey S. Deloatch,
Jackson, Northampton —, N. C.
March 9/86—Rec'd returned P/A F/A &c.
Northampton Co. N. C.
Return papers.

736 *Fee Agreement.*

This is to certify that I, W. R. Deloatch, a son of Dorsey S. Deloatch deceased, of Jackson, Northampton Co. North Carolina, have engaged Geo. B. Edmonds, of Washington, D. C., as my attorney to prosecute my case as son of Dorsey S. Deloatch deceased who has a claim against the U. S. Government, and in consideration of his professional services and expenses incurred by him in the prosecution of said claim, I agree to pay him the fee of fifty per cent. of the amount which may be collected thereon, and said fee is hereby made a lien on any draft that may be issued in payment of said claim.

Subscribed this 8" day of March 1886.

W. R. DELOATCH.

Witnesses:

J. A. BAXTON.
I. N. BAXTON.

37 *Claim of Dorsey S. Deloatch.*

JACKSON, N. C., *Feb.* 24, 1886.

W. R. Deloatch, dealer in family groceries, brandies, whiskies, wines, cigars, tobacco, &c.

Mr. Geo. B. Edmonds.

DEAR SIR: I received a letter from you directed to my father and I will state to you that he is dead, died about five years ago and you will please write me upon what terms or say what amount of the proceed- of what you can collect are you willing to take this case for in hand. Please write me by return mail.

Truly, &c., W. R. DELOATCH.

Endorsed: W. R. Deloatch for Dorsey & Del*a*otch, Jackson. Northampton Co. N. C. Rec'd 2/25/86. 4 R. 506 $2,955.00 March 2/86. Wrote endorsing P/A F/A &c. He had take- benefit of Banks *mt* law, and the claim was rejected wit'hout passing on the question of loyalty.

738 JACKSON, N. C., *April* 24, 1886.

W. R. Deloatch, agent, dealer in family groceries, brandies, whiskies, wines, cigars, tobacco, &c.

Mr. Geo. B. Edmonds.

DEAR SIR: You will please let me hear from — in regards to the claim. I have given you represent for me & what is your opinion of it at this time as to whether it will be acted on this spring or not & how long do you think Congress will hold.

Truly, &c., W. R. DELOATCH, *Ag't.*

Endorsed: W. R. Deloatch, Jackson, N. C. Rec'd 4/25/86. Wants information. April 26/86 answered informing him just as soon as *in* court would advise him.

739 COMPLAINANT'S EXHIBIT No. 18, CONSISTING OF JACKET AND CONTENTS IN RE CLAIM OF N. K. THORNTON.

Endorsement on manila jacket.

Nath'l K. Thornton
4 R. 517 $935.00 / 100
Newton Grove,
Sampson Co. N. C.
3 dist.

(18.)

Endorsement on inner blue envelope contained in jacket.

George B. Edmonds, (Stamp.) (Seal.)
Attorney at law, Hon. W. J. Green.
1810 K street, N. W.,
Washington, D. C.

Claim 935 4# R. p. 517
Nath'l K. Thornton,
Newton Grove, Sampson Co., N. C.
May 11/86 Rec'd—returned P/A F/A &c. executed.
Return papers.

740 *Fee Agreement*

This is to certify that I, Nathaniel K. Thornton, of Sampson, county and State of North Carolina have engaged Geo. B. Edmonds, of Washington, D. C., as my attorney to prosecute my claim against the U. S. Government, and in consideration of his professional services and expenses incurred by him in the prosecution of said claim, I agree to pay him the fee of fifty per cent. of the amount which may be collected thereon, and said fee is hereby made a lien on any draft that may be issued in payment of said claim.

Subscribed this 3rd day of May, 1886.

NATHANIEL K. THORNTON.

Witnesses:
J. E. WEST.
G. W. THORNTON.

741 MARCH 25TH, 1886.

Mr. Geo. B. Edmonds:

Your favorable letter came to hand March 24th, which pleased me to know that some one was kind enough to let me hear from my claim again. Sir, you seem to be willing to try to collect it, if you can make a successful collection of it, push it through and you shall

be liberally paid out of it for your trouble. Please let me hear from you occasionally.

Very respectfully, N. K. THORNTON,
Newton Grove, Sampson Co., N. C.

Endorsed: Nathaniel K. Thornton. Newton Grove, Sampson Co. N. C. Rec'd 3/27/86 4 R. 17 $935.00 April 16/86 wrote enclosing P/A F/A &c. G

742 NEWTON GROVE, N. C., *May 4th*, 1886.

Mr. Geo. B. Edmonds.

DEAR SIR: I am a man needy of all the means justly due me, and if you can favor me, by allowing yourself the ⅓rd of the amount collected it would be a great kindness of you towards me.

Respectfully, N. K. THORNTON.

743 COMPLAINANT'S EXHIBIT No. 19, CONSISTING OF JACKET AND CONTENTS IN RE CLAIM OF WM. T. FAUBER.

Endorsement on manila jacket.

Wm. T. Fauber,
1 R. 47. $400.00.
Arbor Hill,
Augusta Co.,
Va.

(19.)

Endorsement on inner yellow envelope contained in jacket.

Geo. B. Edmonds, Esq., (Seal.) (Stamp.)
Att'y at law,
1810 K street, N. W. Hon. J. Rudolph Tucker.
Washington, D. C.
Claim $400.
1 R. p. 47.
Wm. T. Fauber,
Arbor Hill, Augusta Co., Va.
June 5/86.—Rec'd—returned P/A F/A &c. executed.

744 *Fee Agreement.*

This is to certify, that I, Wm. T. Fauber, of Augusta county, Virginia have engaged Geo. B. Edmonds, of Washington, D. C., as my attorney to prosecute my claim against the U. S. Government and in consideration of his professional services and expenses incurred

by him in the prosecution of said claim, I agree to pay him the fee of fifty per cent. of the amount which may be collected thereon, and said fee is hereby made a lien on any draft that may be issued in payment of said claim.

Subscribed this 3d day of June, 1886.

WILLIAM T. FAUBER.

Witnesses:
I. B. FANVER.
J. M. YATES.

745 COMPLAINANT'S EXHIBIT No. 20, CONSISTING OF JACKET AND CONTENTS IN RE CLAIM OF HENRY FITZHUGH.

Endorsement on manila jacket.

Henry Fitzhugh.
2 R. 194. $75,965 50/100.
Fredericksburg, Spottsylvania Co. Va.
Samuel Fitzhugh, administrator.
Cong. No. 1201.

(20.)

Endorsement on inner blue envelope contained in jacket.

(Stamp.) (Seal.)
Geo. B. Edmonds, Little & Little att'ys to receive
Attorney at law, 20 per cent. of our fee.
1810 K street N. W.
Washington, D. C.

Claim $75,965.50.
3 R. p. 194 Samuel Fitzhugh, admr. Henry Fitzhugh, dec'd. Fredericksburg, Va.
March 20/86.—Rec'd returned P/A F/A &c. executed.
Spottsylvania Co.

(Return papers of claimant.)

746 *Fee Agreement.*

This is to certify that I, Samuel Fitzhugh, administrator of Henry Fitzhugh dec'd of Stafford county, Virginia have engaged Geo. B. Edmonds, of Washington, D. C., as my attorney to prosecute a case of said Henry Fitzhugh's estate for a claim against the U. S. Government, and in consideration of his professional services and expenses incurred by him in the prosecution of said claim, I agree to pay him the fee of fifty* per cent. of the amount which may be

* One fifth of which fee of fifty per ct. is to be paid to Little & Little, attorneys of Fredericksburg, Va.

collected thereon, and said fee is hereby made a lien on any draft that may be issued in payment of said claim.

Subscribed this 19th day of March, 1886.

SAM'L FITZHUGH,
Adm'r of Henry Fitzhugh, Dec'd.

Witnesses:
WM. A. LITTLE.
WM. A. LITTLE, JR.

747 *Claim of Henry Fitzhugh.*

FREDERICKSBURG, *Jan.* 30, 1886.

Mr. Geo. B. Edmonds.

DEAR SIR: I received a letter from you to my father Henry Fitzhugh in which you state that you would like to undertake to collect his claim against the Government. My father is dead and have been dead some two or three years and it is several of us and as I have the management of my father's affairs write to say we would like to take some steps to try to collect his claim against Government and if you have examined the records in Washington what do you think of the matter and what foundation you have to think that it is a good one. I have some of the papers here and was witness in the case and the rest of the papers are on file in Washington. We are not willing to spend any money on it but will give you a liberal percentage if you undertake the case therefore would like for you to examine the records and let me know what you think and then I will come to Washington to see you, but of course if you do not collect the claim you must not expect any pay. Hoping to hear from you at once—

Very respect.,
SAM'L FITZHUGH,
Fredericksburg, Va.

Endorsed: Daniel Fitzhugh, Fredericksburg, Va. Rec'd 1/31/86. 3 R. 194 $75,965 50/100. Wrote him Feb'y 5/86 Spotsylvania Co. March 20/86. Rec'd all necessary papers properly executed by Sam'l Fitzhugh as adm'r. This conclusion has been reached after quite lengthy correspondence, consideration & the taking in as associate counsel Messrs. Little & Little Fredericksburg, agreeing to pay them one-fifth of our fee.

748 Little & Little, attorneys at law.

FREDERICKSBURG, VA., *Feb'y* 22*d*, 1886.

Mr. Geo. B. Edmonds, att'y at law.

DEAR SIR: Mr. Sam'l Fitzhugh son of Henry Fitzhugh dec'd of Stafford City. &c., has sent to me for advice sundry letters &c. from

you, preparing to revive and prosecute the claim of his father H. Fitzhugh dec'd *vs.* U. S. Government for a claim ejected by U.S. claims com'rs.

We were counsel of said Henry with Hon. Joseph Logan in the prosecution of sd. claim and he was to receive 25% of the recovery —While you require 50% we are disposed to advise the parties to employ you & to aid you in the matter as far as we can. It will be necessary to have an adm'r on H. F.'s estate & to prosecute the claim in his name, we can arrange all this—we merely desire that you shall write as fully about the matter & let us hear what chance there is of your success in the matter. Advise us fully & confidentially about it & we think the thing can be arranged.

Very truly yours, LITTLE & LITTLE.

Little & Little, attorneys at law.

FREDERICKSBURG, VA., *Feb'y 25th*, 1886.

Geo. B. Edmonds, Esq.

DEAR SIR: Yours of the 23d was duly received & we have
749 had an interview with our client Mr. Sam'l Fitzhugh on the subject. We think he will agree to have the claim prosecuted, but he is very reluctant to pay ½ of the recovery, as it is double the usual fee in such cases & as most of the work of collecting the testimony &c. is done & the case a strong one upon the record & papers now in the case,—for Logan was sanguine of success and but for his death we would doubtless have pushed along with others of less moment, which did succeed.

We do not think it safe to get authority to prosecute & an agreement for fees from one or two of the parties there are some 7 or 8 of them, & the others might object, after the work was done. The adm'r is the only party whose authority & action will be legal & undisputed & we think it best for Sam Fitzhugh, the eldest son to qualify as adm'r & execute the proper papers. Fitzhugh thought that there were outstanding judgments at his father's death which might interfere with the result. But we were att'ys in all those judgdts & informed him that they had all been assigned to his mother & they now belong to the family as his heirs at law.

If we can succeed in getting him as adm'r to agree to the fifty per cent. fee in the case, there should be some agreement between us to receive a share of this fee, as in no event can more than that amount be agreed upon for all of us—say ten per cent. for our firm and forty per cent. for you, in the matter. We know that we can aid you to that extent & attend to all that is required at this end of the line and perhaps by influencing parties in Congress personally. Let us hear from you & oblige,

Y'rs truly, LITTLE & LITTLE.

750 If you agree with us forward the proper blank & we will attend to them promptly.

Endorsed: Little & Little, Fredericksburg, Va. Feb'y 26/86. Wrote agreeing to proposition with suggestions. Rec'd 2/26/86.

FRED'G, VA., *M'ch* 3*d.*/86.

751

Geo. B. Edmonds, Esq., att'y, &c.

DEAR SIR: Mr. Fitzhugh agrees to the arrangement made in your last letter. He will qualify as adm'r of H. F. [Fitzhugh]* on the 17th inst. at Stafford county court—the earliest day—& immediately thereafter the papers will be duly prepared & forwarded. You may consider the matter settled.

Very truly yours,

LITTLE & LITTLE.

Endorsed: Little & Little, Fredericksburg, Va. [March 20/86. Wrote, inquiring the forwarding of the papers.]* Didn't send the letter.

In Stafford County Court, March Term, 1886.

On motion of Samuel Fitzhugh he is granted administration on his father Henry Fitzhugh, est., whereupon he made oath and with James Roach as security, who being justified as to his sufficiency entered into and acknowledged a bond in the penalty of one hundred dollars conditioned for the faithful discharge of his duties as such adm'r.

A copy
Test:

C. A. TACKETT, *Cl'k.*

FRED'G, VA., *M'ch* 19/86.

752

Geo. B. Edmonds, Esq., att'y, &c.

DEAR SIR: We have just rec'd and enclose you the order of qualification of Sam'l Fitzhugh as adm'r of Henry Fitzhugh, estate—& we have got him to sign & have filled up the blanks rec'd of you.—& trust now that you may be able to do something with the case—Please advise us of receipt & send us copy of the certificate for fees acknowledged &c. by you and oblige,

Yours truly,

LITTLE & LITTLE.

FREDERICKSBURG, VA., *June* 29/86.

Geo. B. Edmonds, Esq., att'y-at-law.

DEAR SIR: We wrote to Mr. Croxton as you suggested about the Fitzhugh case and we enclose his answer to you herein—

Our client the sheriff of Sptva. adm'r of *James Mills*—informs us that the uncle of James Mills whose name was *Robert Mills* was scavenger for Washington city for many years, & died a wealthy man, leaving his est. to his widow for life with remainder to his

[* Words and figures enclosed in brackets erased with pencil in copy.]

heirs at law. He left no children—Robert *W*ills died some 5 years ago & his widow in the last 12 mos.

The adm'r of Jas. Mills thinks that he was entitled to a share of Rob't Mills est.—If you can get any information from your
753 records in Washington about this matter & there should turn out to be anything in it, we can make something out of it, look into it & oblige us.

Yours truly, LITTLE & LITTLE.

Endorsed: Little & Little, Fredericksburg, Va. Rec'd July 1886. July /8[illegible] wrote that she was married to a man by the name of Cole.

Zea, Crawford & Company, general merchandise.

STRASBURG, VA., *Sept. 19th*, 1887.

Mr. Geo. B. Edmonds:

Your letter to me and addressed to Mrs. M. E. Weston, Riverton, is at hand. You request the names persons who will swear to C. T. Weston's loyalty during the entire war.

You have Maj. I. R. Richards and Jas. Way Kendrick evidence taken when the case was up before I suppose, both of these men are still living, & Mr. David Hit of Front Royal lived with C. T. Weston during the war and I think can be of service to you the three gen'ls named all live at Front Royal—F. Royal is one & ½ miles from Riverton the place where the mill was burned. I don't think you can arrange this business satisfactory by correspondence—and any day you will come to Front Royal and will let me know I will come down and render what service I can. Front Royal is 12 miles from here.

Very truly yours, R. W. CRAWFORD.

754 Little & Little, attorneys at law.

FREDERICKSBURG, VA., *Oct. 6th*, 1887.

Geo. B. Edmonds, Esq.

DEAR SIR: Neither Sam'l Fitzhugh nor I have found any further evidence in the case—I think you have it now in as good a shape as it is possible to get it, & you can go ahead with the argument. If I or any one can aid you in any way in the matter, advise us—& don't forget to let us know when anything occurs in the case.

Very truly yours, WM. A. LITTLE.

Little & Little, attorneys at law.

FREDERICKSBURG, VA., *Dec. 29th*, 1887.

Geo. B. Edmonds, Esq.

DEAR SIR: Yours rec'd. The ass't att'y gen'l will never prove the handwriting of Henry Fitzhugh to the vouchers named.

The deposition of Henry Fitzhugh & of his son-in-law Curtis, explain that matter fully—& show that it was all Curtis work without the knowledge & consent of Henry Fitzhugh—This indicates that they are "hard up" & getting weak about this case—We only regret any further delay in the case.

We think you saw them on the question of jurisdiction in the Fenlong case.

Very truly yours, LITTLE & LITTLE.

755 COMPLAINANT'S EXHIBIT No. 21, CONSISTING OF JACKET AND CONTENTS IN RE CLAIM OF JOHN R. HORNBAKER.

Endorsement on manila jacket.

John R. Hornbaker,
2 R. 200 $550.00.
Bristoe,
Prince William Co., Va.
(8 dist.)

(21.)

Endorsement on inner blue envelope contained in jacket.

Geo. B. Edmonds,
Attorney at law,
1810 K street, N. W.,
Washington, D. C.

(Stamp.) (Seal.)
Jno. S. Berton, 8 dist.

Claim $550. 2 R. p. 200.
John R. Hornbaker,
Bristoe, Va.
March 11/86, rec'd. Returned P/A F/A, &c., executed.
Prince William Co.
(Return papers.)

756 *Fee Agreement.*

This is to certify, that I, John R. Hornbaker, of Bristoe, State of Virginia, have engaged Geo. B Edmonds, of Washington, D. C., as my attorney to prosecute my claim against the U. S. Government, and in consideration of his professional services and expenses incurred by him in the prosecution of said claim, I agree to pay him

the fee of fifty per cent. of the amount which may be collected thereon, and said fee is hereby made a lien on any draft that may be issued in payment of said claim.

Subscribed this 10th. day of March, 1886.

J. R. HORNBAKER.

Witnesses:

E. L. HORNBAKER.

—— ——.

757 *Claim of John R. Hornbaker.*

"Milford mills;" J. R. Hornbaker, manufacturer of all grades of flour, meal, feed and all kinds of dressed lumber.

BRISTOE, VA., 2/3, 1886.

Geo. B. Edmonds, Esq.

DEAR SIR: Your favor Jan. 21st received—and contents noted. In regard to any Government claim will say that I would like to get some one to look after it. My attorney that I had to attend to the matter wrote me to come down on a certain day when the claims were to come up and bring my wife along as they wanted a little more proof as to the taking of the flour; and at that time I was not well enough to go, and that was the way it came to be set aside, and the attorney died. I had employed and I have never looked after it since. In my claims I only brought in one item which was for 50 bbls. of flour @ $10.00 per bbl. after they took it I had to pay $15.00 per bbl. for my flour, I put in the claim for the flour because I felt the loss of it the worse. But that was not half the damage the army did me, they burned my fence and a tenent house that was occupied at the time, & also killed my stock to feed the army, but I can't say what part of the army did it, but I know that the U. S. Army did it. Would there be any chance to get anything for the last items mentioned and what per cent. would you want if you should collect my claims. Please let me hear from you soon & oblige.

Yours truly, J. R. HORNBAKER.

758 COMPLAINANT'S EXHIBIT No. 22, CONSISTING OF JACKET AND CONTENTS IN RE CLAIM OF THOMAS W. RUSSELL.

Endorsement on manila jacket.

Thomas W. Russell.
4 R. 584. $1,007.80/100.
Berryville, Clark Co.,
Va. 7 dist.
(22.)

Endorsement on inner blue envelope contained in jacket.

George B. Edmonds, (Seal.) (Stamp.)
Attorney at law,
1810 K street, N. W.
Washington, D. C.

Claim 1007.80.
4 R. p. 584
Thomas W. Russell,
Berryville, Clark Co., Va.
March 23/86.—Rec'd returned—P/A F/A &c. executed.
Return papers.
Chas. T. O'Farrall.

759 *Fee Agreement.*

This is to certify that I, Thomes W. Russell of Clark county and State of Virginia, have engaged Geo. B. Edmonds, of Washington, D. C. as my attorney to prosecute my claim against the U. S. Government, and in consideration of his professional services and expenses incurred by him in the prosecution of said claim, I agree to pay him the fee of fifty per cent. of the amount which may be collected thereon, and said fee is hereby made a lien on any draft that may be issued in payment of said claim.

Subscribed this 20th. day of March 1886.

THOS. W. RUSSELL.

Witnesses:

WM. N. NELSON.
GEO. GLASS.

760 *Claim of Thomas W. Russell.*

BERRYVILLE, *March 9th*, 1886.

Mr. Edmond-:

I rec'd yours of the 4th ins. I am glad you have some hope you can make the claim against the Government which I cincerely hope you may—you wish me to say the — I am willing — give you if you are successful you may state your terms you take it on and pay yourself out of the proceeds if you should get it as I have been to so much cost already that I should not like to spend any more—if this proposal should please you you may send me a power of attorney and state in it your terms & I will sign & return to you which will make you safe for your trouble if you should gain it. I will just state to you that as to my loyalty if you will *sech* the offices in your city you will find I was appointed U. S. com'r as soon as the court was organized in our district and have conducted it to this date.

I am sir,

Yours truly, T. W. RUSSELL.

Endorsed: Thomas W. Russell Berryville, Clark Co., Va. Rec'd 3/8/86 4 R. 584 $1,007.80 Mar. 11/86 wrote enclosing P/A. F/A. &c.

761 COMPLAINANT'S EXHIBIT No. 23, CONSISTING OF JACKET AND CONTENTS IN RE CLAIM OF MOSES BAYLOR.

Endorsement on Manila jacket.

Moses Baylor.
4 R. 593 $2,458.00.
Middleway, Putnam Co.,
West Va.

(23.)

Endorsement on inner blue envelope contained in jacket.

Geo. B. Edmonds, (Stamp.) (Seal.)
Attorney at law,
1810 K street, N. W.,
Washington, D. C. Hon. Eustace Gibson.

Claim $2,458.
4 R. p. 593 *124.*
Moses Baylor,
Middleway, W. Va.
March 12/86.—Rec'd returned P/A F/A &c. executed
Returned papers. Putnam Co.

762 *Fee Agreement.*

This is to certify that I, Moses Baylor of Middleway in the State of West Virginia, have engaged Geo. B. Edmonds, of Washington, D. C., as my attorney to prosecute my claim against the U. S. Government, and in consideration of his professional services and expenses incurred by him, in the prosecution of said claim, I agree to pay him the fee of fifty per cent. of the amount which may be collected thereon, and said fee is hereby made a lien on any draft that may be issued in payment of said claim.

Subscribed this 11th day of March 1886.

MOSES BAYLOR.

Witnesses:

SAM'L L. MYERS.
JAMES W. LEAGUE.

763 COMPLAINANT'S EXHIBIT NO. 24, CONSISTING OF JACKET AND CONTENTS IN RE CLAIM OF JOSEPH L. ROBERTS.

Endorsement on manila jacket.

Joseph L. Roberts
4 R. 595 $495 00/100
Leetown, Jefferson Co., West Va.
2 dist.

(24.)

Endorsement on inner blue envelope contained in jacket.

(Seal.) (Stamp.)

Geo. B. Edmonds,
Attorney at law,
1810 K street, N. W.
Washington, D. C. Wm. L. Wilson.

Claim $495.00
4 R. p. 595
Jos. L. Roberts,
Leetown, Jefferson Co., W. Va.
Feb'y 26/86—Rec'd. Returned P/A F/A &c. petition execution.

764 *Fee Agreement.*

This is to certify that I, Jos. L. Roberts, of Charlestown, in the State of West Virginia, have engaged Geo. B. Edmonds, of Washington, D. C., as my attorney to prosecute my claim against the U. S.

Government, and in consideration of his professional services and expenses incurred by him in the prosecution of said claim, I agree to pay him the fee of fifty per cent. of the amount which may be collected thereon, and said fee is hereby made a lien on any draft that may be issued in payment of said claim.

Subscribed this 25th day of February 1886.

JOSEPH L. ROBERTS.

Witnesses:

GEORGE D. JOHNSON.
JOHN H. LINDSAY.

765 COMPLAINANT'S EXHIBIT No. 25, CONSISTING OF JACKET AND CONTENTS IN RE CLAIM OF GEORGE SHAW.

Endorsement on manila jacket.

George Shaw
4 R. 409 $1,025.00 / 100.

Shepherdstown, Jefferson Co.,
West Virginia,
2 dist.

(25.)

Endorsement on inner blue envelope contained in jacket.

Geo. B. Edmonds, (Seal.) (Stamp.)
Attorney at law,
1810 K street, N. W., Wm. L. Wilson.
Washington, D. C.

Claim $1,025.00.
4 R. p. 409
George Shaw,
Shepherdstown, W. Va.
Feb'y 19 / 86—Rec'd.—Returned P / A F / A &c. executed.
Jefferson Co.

766 *Fee Agreement.*

This is to certify that I, George Shaw of Shepherdstown in the State of West Virginia have engaged Geo. B. Edmonds, of Washington, D. C., as my attorney to prosecute my claim against the U. S. Government, and in consideration of his professional services and expenses incurred by him in the prosecution of said claim, I agree to pay him the fee of fifty per cent. of the amount which may be col-

lected thereon, and said fee is hereby made a lien on any draft that may be issued in payment of said claim.

Subscribed this 17th day of February 1886.

GEORGE SHAW.

Witnesses:
W. H. BALLINGER.
H. S. HARRISON.

767 *Claim of George Shaw.*

SHEPHERDSTOWN, W. VA., *Feb. 4th*, '86.

Mr. Edmonds, Washington.

DEAR SIR: I received yours in reguard to my Government claim I have about 2,000 dollars in and I have got ownly 30 dollars. A man by the name of McKune got 30 dollars for me if you can get it I wish you would make an effort to do so I have spent a good deal of money on them so far a good deal more than I ever got out of it if you think there is any show for it you are at liberty to make the trial. Let me hear from you.

GEO. SHAW.

Endorsed: Mr. Shaw Shepherdstown, W. Va. Rec'd 2/5/68 4 R. 409 $1,025.00 Feb'y 6/86 wrote enclosing P/A F/A &c. Feb'y 18/86 wrote requesting return of papers.

SHEPHERDSTOWN, W. VA., *Feb'y 17th*, 1886.

Geo. B. Edmonds, att'y.

DEAR SIR: I enclose the power of attorney and other papers employing you as my attorney to represent my claim. I would like to hear from you as soon as convenient, what progress you are making, and what amount you think will be recovered.

Very respectfully yours, GEORGE SHOW.

768 *Memorandum.*

Manila jacket No. 26 and contents are missing from the files. This relates to claim of —— ——.

769 *Fee Agreement.*

This is to certify that I, Susan S. Merrill, of Lee county, Mississippi, have engaged Geo. B. Edmonds, of Washington, D. C., as my attorney to prosecute my claim against the U. S. Government, and in consideration of his professional services and expenses incurred by him in the prosecution of said claim, I agree to pay him the

fee of fifty per cent. of the amount which may be collected thereon, and said fee is hereby made a lien on any draft that may be issued in payment of said claim.

Subscribed this 20th day of April, 1886.

SUSAN S. MERRILL.

Witnesses:
W. W. STONE.
A. J. WEST.

Memorandum.

Exhibit G. M. is a letter from Edmonds to Moyers in relation to Susan Merrill claim; the same is not however, among our files.

770 Unsigned paper entitled—

Court of Claims of the U. S. A.

SUSAN S. MERRILL *vs.* THE UNITED STATES. } Cong. Case No. 1681.

In the above case there was a finding by the Court of Claims in favor of Susan S. Merrill for $815.00/100 and at the last session of Congress there was an appropriation made, conditionally, to pay the claim, one half of which belongs to Susan S. Merrill of Lee Co., Miss., and the balance, by certain agreement for fees, belongs to myself and one Geo. B. Edmonds, of Washington, D. C., and the object of this writing is — sell, assign and set over to said Edmonds all my right and title to said Edmonds his heirs and assigns, and I hereby authorize said Edmonds or his assigns to erase my name as the attorney for said Merrill and have any name put as her attorney, and do everything hereafter as if they had been her attorney from the start.

Dated July — A. D. 1891.

____ ____,
Attorney for said Merrill.

771 *Memoranda.*

For Complainant's Exhibit in Rebuttal No. 1, see Complainant's Exhibit in Rebuttal No. 1, the same being letter from A. B. Richardson, superintendent of Government Hospital for Insane &c. to Davis & Tucker, on page 382 of original record.

For Complainant's Exhibit in Rebuttal No. 2, see Complainant's Exhibit in Rebuttal No. 2, the same being letter from superintendent of Soldiers' Home, Hampton, Virginia; to Davis & Tucker on page 383 of original record.

772 *Memoranda.*

For Exhibit H. A. C. No. 1, see Complainant's Exhibit H. S. C. No. 1., page 1 of these exhibits.

For Complainant's Exhibit in Rebuttal No. 3, see Complainant's Exhibit in Rebuttal No. 3, the same being a letter dated May 26, 1899 from Moyers to Cummings on page 384 of original record.

For Complainant's Exhibit in Rebuttal No. 4, see reference made thereto on page 385 of original record.

Exhibit C is not among the files, but reference is made to same on page 462 of original record.

773 *Directions to Clerk for Preparation of Record.*

Filed April 30, 1903.

In the Supreme Court of the District of Columbia:

H. S. CUMMINGS, Administrator, etc., *vs.* GILBERT MOYERS. } Equity. No. 20802.

To the clerk of the supreme court of the District of Columbia:

In the transcript of the record required for the purposes of the appeal heretofore taken by defendant from the decree of the court filed on February 5, 1903, you will please include the following portions of the record; these being, as defendant is advised and believes, all that are necessary for full consideration and examination of the matters embraced in said appeal.

1. Bill of complaint, filed September 16, 1899.
2. Answer of defendant to bill of complaint, omitting affidavits attached, of other persons than defendant, filed September 20, 1899.
3. Defendant's motion for leave to amend answer, filed May 18, 1900. Order overruling said motion, filed the same day.
4. Defendant's motion for leave to amend answer, filed May 23, 1900, and amendment accordingly filed. Order of court allowing filing of supplemental answer, filed May 24, 1900.
5. Supplemental answer, filed May 26, 1900.
6. Motion to strike portions of supplemental answer, filed June 1, 1900, and order granting said motion, made the same day.

774 7. Joinder of issue on supplemental answer, filed June 5, 1900.

8. Decree referring cause to auditor, filed June 13, 1900.
9. Report of auditor, filed August 20, 1902.
10. Defendant's exception to report of auditor, filed September 19, 1902.

11. Cross bill offered by defendant, filed December 19, 1902.
12. Defendant's motion to open and remand report of auditor, filed December 11, 1902.
13. Depositions of John C. Scott and others, taken by Mason N. Richardson, examiner, (one package) with accompanying exhibits to deposition of defendant, some detached.
14. Depositions of Horace S. Cummings and others taken by Alexander H. Galt, examiner (one package).
15. Depositions of Edward A. Balloch and others, taken by J. Arthur Lynham and Mason N. Richardson, examiners, (one package).
16. Depositions of defendant and others taken before the auditor (one package), omitting introductory statement of auditor.
17. Decree, filed February 5, 1903.
18. Defendant's bond for appeal from above decree.
19. Stipulation etc., extending time for filing transcript for this appeal.

BENJ. CARTER,
Solicitors for Defendant.

775 *Complainant's Designation of Record.*

Filed May 7, 1903.

In the Supreme Court of the District of Columbia.

HORACE S. CUMMINGS, Administrator, etc., Complainant,
vs.
GILBERT MOYERS, Defendant & Appellant. } Equity. No. 20802.

To the clerk of the supreme court of the District of Columbia:

In addition to the parts of the transcript of the record in the above entitled cause heretofore designated by the defendant and appellant, which he, the said appellant, desires to be included in said transcript, the complainant and appellee hereby designates the following parts of the record and proceedings in said cause which he deems necessary and material for the appeal therein; and you are hereby directed to include the same in the transcript of the record.

1. All exhibits attached to the bill of complaint.
2. All affidavits and exhibits attached to the answer, except the affidavits of Joseph A. Blundon and James A. Cahill.
3. All exhibits attached to and referred to in the depositions of witnesses on behalf of the complainant, taken before the examiners in chancery in said cause.
4. Depositions of witnesses before auditor, filed February 3, 1903, for August 20, 1902, accompanying auditor's report filed August 20,

1902, including statement of auditor attached to such depositions, and all exhibits and documentary evidence offered and received during the taking of said testimony before the auditor.

776

5. Certified copies of papers from Treasury Department, filed March 15, 1900, relating to the claim of Susan Merrill, together with letter of transmittal from the Assistant Secretary of the Treasury.

6. Certified copies of papers from the Treasury Department, filed June 7, 1902, relating to the claim of John Ehs, together with letter of transmittal from the Assistant Secretary of the Treasury.

7. Joinder of issue on answer, such joinder having been filed September 26, 1899.

CHAS. COWLES TUCKER,
Solicitor for Complainant and Appellee.

Benjamin Carter, Esquire, attorney for said defendant and appellant:

Take notice that I have this — day of May, 1903, filed with the clerk of the said court a notice (of which the above is a copy) designating other parts of the record and proceedings in the above entitled cause which the complainant and appellee herein deems necessary and material for the appeal; and have instructed said clerk to include such other parts in the transcript of the record to be prepared by him.

CHAS. COWLES TUCKER,
Solicitor for Complainant and Appellee.

777 *Instructions to Copy Additional Papers in Transcript of Record.*

Filed December 31, 1903.

HORACE S. CUMMINGS, Administrator, Complainant,
vs.
GILBERT MOYERS, Defendant.
} No. 20802. Eq.

To be copied and added to the transcript of the record.

1. Complainant's Exhibit H. S. C. No. 1, before examiner (p. p. 106–'7) being schedule of cases attached to partnership agreement.

2. Edmonds' jackets of claims mentioned in bill of complaint, together with contents of same (p. p. 106–'7) omitting the 4 or 5 jackets of claims mentioned in Moyers' amended answer, and which admittedly were collected by other attorneys. The jackets and contents to be copied are included in the bunch of jackets marked Complainants' Exhibits 1 to 26 both inclusive.

3. Complainant's Exhibit in Rebuttal Nos. 1 and 2, being letters from superintendent of Government Hospital for Insane and endorsement of Southern Branch of National Home for Disabled Volunteers, dated March 19th, 1900 on letter from Davis & Tucker. (I have not the page of the transcript of record.)

3. Exhibit G. M. June 3, 1901 being letter from Edmonds to Moyers relating to Susan Merrill case and fee agreement between Susan Merrill and Edmonds dated April 20th, 1886 and unsigned paper entitled "In the Court of Claims, Susan Merrill *v.* The United States" (p. 592).

4. H. A. C. No. 1 (p. 594).

778 5. Complainant's Exhibit in Rebuttal No. 3 letter dated May 26, 1899 to Cummings from Moyers (I have not the page of transcript on which this exhibit is mentioned).

6. Complainant's Exhibit in Rebuttal No. 4, being Susan Merrill jacket and contents (ditto).

7. Exhibits C. (p. 462).

8. Exhibits H. A. C. No. 4, letter from Anna Hunt to Edmonds dated September 29th, 1896 (ditto).

9. Directions of defendant to clerk to prepare the record on appeal filed April 30th, 1902.

10. Complainant's designation of parts of record to be included in transcript filed May 27th, 1902.

Clerk will please copy foregoing to be added to record already sent to Court of Appeals in Cummings, ag't Moyers.

C. C. COLE,
Attorney for Defendants.

779 Endorsement on manila jacket of Gilbert Moyers.

No. —
Book A page 425.

John Ehs,
Jackson, Miss.

Before S. C. commissioner.
For $——
From C 2
Filed.
Nov. 4/85 To go to Cong.
July 25/86 To Court of Claims.
" 28 " Am't p'd for ex.
June 15/87 Wrote to claimant.

Claimant testifies strongly to loyalty,—went to Vicksburg with Sherman's army; did not return until after the war. (The rest is not legible) disloyal.

Contents of Moyers' Jacket.

JACKSON, *Nov. 3rd*, 1885.

DEAR SIR: i write to you this few lines to let you that i hove Received you Letter few days ago And was glad to hear from you again the Last of My Property that i lost in the army i Lost ever thing that i had i am an old man and sick all the time and i cant attend to it i wish you would attend to it i would be ever much oblige to you

Oblige yours

My address: JOHN EHS,
Jackson, Miss.

Endorsed: Nov. 30/85. *Ehs case.*

780 *No. 1156.* John Ehs Original claim in my hands. Edmonds' name does not appear on my docket.

781 *Letters of J. M. Harding to Gilbert Moyers.*

PORT GIBSON, MISS., *June* 5, 1890.

Gilbert Moyers, Esq., Washington, D. C.

MY DEAR SIR: You will remember having met me here when you visited this place to take testimony under the Bowman act in several claim cases *vs.* the Government. I am interested in the claim of my grandfather Judge James H. Maury which was one you had in hand.

Will you please inform me of the present status of that case, and your opinion of your chance to get it allowed?

Do you think the court will allow it, and that Congress will provide for its payment?

Please let me hear from you on the subject and oblige—

Yours truly, J. M. HARDING.

782 PORT GIBSON, MISS., *May* 22, 1891.

Gilbert Moyers, Esq., Washington, D. C.

MY DEAR SIR: Yours of the 18th inst. rec'd. I remember receiving a letter from you several months ago but it did not indicate the character of the evidence needed.

I will at once proceed to look up evidence on the point mentioned and let you know with what success I meet.

Yours truly, J. M. HARDING.

PORT GIBSON, MISS., *May* 22*nd*, 1893.

Gilbert Moyers, Esq., Washington, D. C.

MY DEAR SIR: Your recent postal card rec'd. I do not now know of any witness, whose testimony I can procure in the Richard Harding claim, but what would be simply *cumulative* of the testimony your Mr. Martin obtained in that claim during his recent visit to this place.

After writing you while Mr. Martin was here, I succeeded in getting the testimony of three witnesses, but fear it is not very strong. The fact is, at this late date witnesses are scarce having died or moved away.

There is only one contemporary of Richard Harding now
783 living in his old neighborhood, and his testimony was taken in the claim years ago.

As to the James H. Maury claim, I confidently expect to recover on the testimony taken last before A. K. Jones, chan. cl'k. If this claim is again disallowed, I will not take a third bite at the cherry.

Yours truly, J. M. HARDING.

Don't forget to change the style of the James H. Maury claim from James A. Harding adm'r to James M. Harding adm'i'r.

J. M. H.

PORT GIBSON, MISS., *Dec.* 27/95.

Gilbert Moyers, Esq., Washington, D. C.

MY DEAR SIR: In the Richard Harding claim *vs.* The U. S. in the Court of Claims, the testimony of J. W. Martin, witness for claimant, was taken yesterday before R. W. Magruder Ex. N. P. & has been mailed to the clerk of the Court of Claims at Washington.

This is all the testimony I can get in this claim.

I suggest that the legal fraternity who are interested in prosecuting similar claims *from* what I might call an "Eloquence trust" and combine your oratorical powers to argue the Court of Claims into adopting the rule in view of recent events, the President's Ven-
-zuelan message, Mr. Olney's note, the unanimous action of
784 both Houses of Congress in passing the commission resolution and the Christmas present of the Senate to ex-Confederates in removing *all* their disabilities and the spontaneous outburst of patriotism all over our country—to allow all of the claims for supplies received by the U. S. Army during the last war wherever the claim has been proved up, except in such cases where the Government has proved overt acts of disloyalty on the part of the original claimant, if any such there be.

We are one people now, and I don't like the idea of our courts making any distinction between her citizens.

I presume the record in this case shows the fact that Richard Harding departed this life in 1867 at the ripe old age of 86 years. so that during the late war he could not (and he did not) aid the Confederate cause.

Please let me know promptly what decision the court will make in this case and don't let the present session of Congress adjourn without paying me the James H. Maury claim that was allowed by the court.

Yours very truly, J. W. HARDING.

PORT GIBSON, MISS., *August* 19, 1896.

Gilbert Moyers, Esq., Washington, D. C.

MY DEAR SIR: Yours of the 14th inst. enclosing contract for my signature has been rec'd.

785 I, of course, expect to pay out fifty per cent. of the amount recovered on the J. H. Maury claim for attorneys' fees. I do not know what contract the deceased claimant may have made in this regard during his life time.

My first move in this case was through Geo. B. Edmonds, Esq., and I do not know what he might claim by way of fee.

I write to-day to the Secretary of the Treasury for information concerning liens that may be on file in his office in the Maury claim.

I will communicate with you later.

Fifty per cent. of the claim will go for attorneys fees.

Very truly yours, J. M. HARDING.

786 Endorsement on manila jacket of Gilbert Moyers.

No. 4203 Cong.
E. 136.
Estate of Roderick Williams, dec'd.
Wilson Williams, adm'r, Lafayette Co. Miss.
Dec. 1873—$1095.00.
Write Wilson Williams,
Taylor, Lafayette Co. Miss.
Oxford, Miss. Oct. 31 / 89.

Memorandum.

Wilson Williams,
Adm'r R. Williams, Taylor P. O.,
Lafayette Co. Miss.

Dec. 27 / 87. $1095.—1873.
Pet. to Congress P / A & fee agreement for ⅓ sent claimant, Dec. 29 / 87.
Jan'y 25 / 88.
Above rec'd & forwarded Col. M. at Washington, with this letter 1 / 25 / 88.

S.

787 *Entries in Moyers Docket.*

Tupelo, Miss.

SUSAN MERRILL, Lee Co., Miss.,
v.
THE UNITED STATES. } No. 1681. Cong.

To the Court of Claims.

All papers at court.

M'ch 31/87. Wrote Memphis for petition and P/A.
Ap'l 19 " Petition and P/a & f/a to cl'm't, Tupelo, Miss.
June 24/87. Appearance filed.
July 16/87. Brief on loyalty made and sent Memphis with jacket.
Aug. 5/87. Made 3 copies petition, 2 to Memphis and one to the Dep't Justice.
Sept. 22/87. Depositions for cl'm't filed.
Nov. 21/87. Power of attorney filed in court.
" " " Jacket returned by G. M.
Dec. 4/87. Petition sent W. W. Stone, Tupelo, Miss.
March 17/88. Claimant's brief on loyalty filed.
April 23/88. Defendant's brief on loyalty filed.
May 3/88. Case submitted on question of loyalty.
" 7/88. Court finds claimant loyal.
" 19/88. Mailed petition to cl'm't for execution.
June 5/ " Petition rec'd and filed, also mo. to extend time.
" 9/ " Withdrawn to print.
July 9/ " Petition and 25 copies refiled.
July 11/ " Claimant's brief and request for findings filed.
Oct. 30/ " Defendant's brief on merits filed.
Nov. 3/ " Reply to defendant's brief on merits filed.
Dec. 20/ " Argued and submitted.
" 24/ " Court finds for claimant $815.00.
Feb'y 27/89. Motion for transmittal of findings to Congress filed.

788

Dec. 3, 1891. Certificate issued by Att'y General filed in Treasury Department.
Jan'y 8, 1892. Draft mailed claimant on war, No. 2182.

Papers from Court of Claims in Susan Merrill Case.

Filed in Court of Claims.

1887.
March 4th. Petition to Commissioner of Claims.
March 4th. Summary report of Commissioner of Claims—submitted to Congress December 4th, 1886.
March 4th. Proof taken by J. T. Moseley (special commissioner).
March 4th. Testimony of H. M. Haynie and Susan Merrill.
March 4th. Testimony taken before John T. Moseley, com.
March 4th. Report of D. Edwards, spec. agent (July 24, 1875) adverse to loyalty.
March 4th. Order of Committee of War Claims of Congress.
March 4th. Letter of Raitt & Francis to clerk of Commissioner of Claims asking for evidence and further time.
June 30th. Appearance by Gilbert Moyers.
Sept. 22nd. Depositions of R. E. Clark (for comp.) (Gilbert Moyers appeared as attorney).
Oct. 31st. General Traverse (Govt.).
Nov. 22nd. Power of attorney to Gilbert Moyers—executed November 16th, 1887.

1888.
Mar. 17th. Brief on loyalty (claimants) (Gilbert Moyers appeared as attorney).
Apr. 21st. Def'*d* brief on loyalty.
May 7th. Court finds claimant loyal.
June 6th. Motion for extension of time to file petition by Gilbert Moyers, attorney.
June 6th. Original petition (Gilbert Moyers appeared as attorney).
June 11th. Brief on merits and request for finding of fact (Gilbert Moyers appeared as attorney).
Oct. 30th. Def's brief on merits, filed October 30, 1888.
789
Nov. 3rd. Reply to def's brief on merits (Gilbert Moyers appeared as attorney).
Dec. 24th. Finding of facts by court—claimant entitled to $815.00—stating Gilbert Moyers appeared for claimant Mar. 4th, 1888.

1889.
Feb. 27th. Motion for transmittal of findings of fact to Speaker of House (Gilbert Moyers appeared as attorney).

1891.
Aug. 24th. Motion to withdraw temporarily all papers.

[Endorsed:] No. 1361. Charles F. Consaul and Ida M. Moyers, administrators of Gilbert Moyers, deceased appellants *vs.* Horace S. Cummings, administrator of George B. Edmonds, deceased. Addition to record per stipulation of counsel. Court of Appeals, District of Columbia. Filed Mar. 23 1904 Henry W. Hodges, clerk.

790 In the Court of Appeals of the District of Columbia.

CHARLES F. CONSAUL ET AL., Administrators of Gilbert Moyers, Deceased, Appellants,
vs.
HORACE S. CUMMINGS, Administrator of George B. Edmonds, Deceased, Complainant.
} No. 1361.

Stipulation.

It is stipulated and agreed by and between the parties hereto, by their respective solicitors of record, that the contents of the following named exhibits which were part of the record of this cause in the court below, and which were omitted by the clerk of that court from the transcript of the record heretofore filed in this court, were substantially as follows, to wit:

1. Complainant's Exhibit, No. 27, to the testimony taken before the examiner in the court below, was a docket in the handwriting of George B. Edmonds, deceased, of the claims mentioned in the schedule of 385 claims, offered in evidence by the appellee below, and a few other claims not mentioned in said schedule, which schedule is claimed by him to have been attached to the partnership agreement of February 6, 1888, between George B. Edmonds, deceased, and Gilbert Moyers, deceased; said docket containing all of the claims except six mentioned in said schedule, and there are thirty in the docket not mentioned in said schedule, one page of said docket being generally devoted to each of said claims although in some instances two claims were entered on a page; and the entries concerning each claim, containing the name, post-office address, and in most instances the congressional district of each claimant and the amount of the claim and also the volume and page of the published reports of the commissioners of claims corresponding to the volume and page of said reports following the name of each of the claimants named on said schedule.

791 Said docket was found among the effects of said decedent, George B. Edmonds, after his death.

2. Complainant's Exhibit, No. 30, attached to the testimony taken before the examiner in the court below, consisted of a docket of seventy-eight (78) pages of the claims mentioned in said schedule, the entries of each claim being under the caption of the State in which each claimant resided. Said docket was also found among the effects of said decedent, George B. Edmonds, after his death.

3. Complainant's Exhibit, No. 29, attached to the testimony taken before the examiner in the court below, consisted of the index of all of said claims mentioned in said schedule, the entries in said index being in the handwriting of said decedent, George B. Edmonds; said index having been found among his effects after his death.

4. That during the taking of testimony before the auditor in this cause, under the reference ordered by the decree of the court below of June 13, 1900, the complainant offered in evidence, and the same were admitted in evidence, over the objection of counsel for Gilbert Moyers, deceased, several hundred envelopes or jackets and the contents thereof, which were found among the office effects of the said decedent, George B. Edmonds, after his death, relating to the claims mentioned in the schedule offered in evidence by the complainant, which schedule was claimed by him to have been attached to said partnership agreement; said jackets and their contents relating to claims other than those mentioned in the bill of complaint and Complainant's Exhibit No. 1 attached to his said bill of complaint. Each and every of said several hundred jackets contained and endorsement on its back in the handwriting of said decedent, George B. Edmonds, of the name of the claimant, the amount of the claim and other entries relating to correspondence with claimant, powers of attorney, etc., and contained a fee agreement purporting to have been executed by the claimant and a power of attorney from the claimant to the said decedent to prosecute said claim, together with
792 letters purporting to have been written by the claimant, or someone in his behalf, to the said George B. Edmonds, deceased, relating to the prosecution of said claim. All powers of attorney, fee contracts, and correspondence, contained in said several hundred jackets, and all the entried endorsed thereon, were dated anterior to the date of said partnership agreement of February 6, 1888, between the decedent, George B. Edmonds, and the decedent Gilbert Moyers. The names of the claimants on said several hundred envelopes or jackets, and on the envelopes or jackets relating to the claims mentioned in said bill of complaint and Complainant's Exhibit No. 1, attached thereto offered in evidence by the complainant in the court below, corresponded exactly with the names of the claimants contained in the schedule of claims offered in evidence by the complainant in the court below, and claimed by him to have been attached to said partnership agreement of February 6, 1888.

5. That in addition to the foregoing evidence, the complainant called upon the said Gilbert Moyers to produce, and he did produce, and the complainant offered and the same were received in evidence, the office papers of the defendant relating to all of the claims mentioned in the bill of complaint and the Complainant's Exhibit No. 1, attached thereto, and also the claim of Susan Merrill, said office papers consisting for the most part of correspondence between said defendant and said claimant. All of said correspondence, however, post-dated the date of the said partnership agreement of February 6, 1888, except that in the case of Susan Merrill, and there were not contained among said office papers any fee contract between said defendant and of said claimants, and no powers of attorney from any of said claimants to said defendant antedating said partnership agreement of February 8, 1888.

6. That complainant also called upon the defendant to produce, and the defendant did produce, and the same were offered and re-

ceived in evidence, his office dockets containing entries in all
793 of the claims mentioned in the preceding paragraph, but none of said entries showed any action taken by the defendant in the matter of the prosecution of any of said claims prior to the date of said partnership agreement of February 6, 1888, except the Merrill case.

7. Complainant further offered in evidence in the court below, the records and papers of the lower court in lunacy proceedings in that court, known as equity No. 12,926, as appears on page 328, of the transcript of the record heretofore filed in this court. The offer by counsel of said records and papers correctly states their contents.

8. The defendant in the court below, produced before the auditor under the reference ordered by the decree of the lower court of June 13, 1900, a list of cases, which was marked "Exhibit B" and entitled, "List of Edmonds' cases," which contained the names of 225 cases, which he admitted he received from George B. Edmonds, deceased, and which were embraced in said partnership agreement of February 6, 1888. Said cases, as far as they went, corresponded with the cases named in the schedule of cases offered in evidence in the court below by the complainant and claimed by him to be the schedule or list referred to in said partnership agreement and attached thereto. At the same time and under the same reference, the said defendant produced, a list marked "Exhibit "A," of cases marked "Cases on Edmonds' schedule, which belong to other attorneys or which were received by Moyers from them." The names of said last mentioned cases were also contained in said schedule, and said Exhibit A embraced — cases.

Either or any parties hereto shall be at liberty to produce or print any of the documentary evidence mentioned or referred to in this stipulation or contained in the record of the lower court in this case, in the hearing of this cause if the same shall be deemed material by him; and this stipulation shall not be deemed binding, in any of its terms, on any of the parties hereto, if it shall be at variance with any of said documentary evidence.

794 It is expressly understood and agreed that the parties by entering into this stipulation as to the contents of the exhibits and documentary evidence mentioned herein, do not admit that there were not other exhibits and documentary evidence offered and received in evidence in the court below material and necessary to the proper determination of this appeal.

It is further stipulated that a fragmentary paper in the case of Anna Hunt, which was produced by the deceased defendant, Gilbert Moyers, before the auditor in the hearing before him under the reference ordered by the decree of June 13th, 1900, and which is known as Exhibit —, which is impossible to print may be produced by either or any of the parties to this cause at any hearing thereof. March 23d, 1904.

CHARLES COWLES TUCKER,
Sol. for Complainant.
C. C. COLE, *Sol'r for Defendants.*

(Endorsed:) No. 1361. Charles F. Consaul and Ida M. Moyers, administrators of Gilbert Moyers, deceased, appellants, *vs.* Horace S. Cummings, administrator of George B. Edmonds, deceased. Stipulation of counsel. Court of Appeals, District of Columbia. Filed Mar. 23, 1904. Henry W. Hodges, clerk.

795 In the Court of Appeals of the District of Columbia.

CHARLES F. CONSAUL and IDA M. MOYERS, Administrators of the Estate of Gilbert Moyers, Deceased,
vs.
HORACE S. CUMMINGS, Administrator of the Estate of George B. Edmunds, Deceased. } No. 1361.

It is hereby stipulated by and between the solicitors of the respective parties to the above entitled cause that the following mentioned papers shall be omitted from the record now on file in the clerk's office of this court, and shall not be printed with the resid-e of said record, to wit:

Affidavits of E. N. Hill, J. C. Scott, pp. 20, 21, 22, inc.

Motion for appointment of receivers and accompanying papers pp. 39–46, inc.

Affidavit of Tucker pp. 49–50.

Answer of Moyers to application for receiver pp. 51–54, inc.

Reports of receivers and exhibits pp. 57–63, inc.

Report of receivers filed May 24, 1902, and accompanying papers, with order directing receivers, etc., also motion of complainant to enlarge said order—the supplemental report of receivers, and accompanying papers pp. 394–411, inc.

Petition of Barber to intervene—order allowing same pp. 637–642, inc.

Report of receivers filed May 14th, 1903, and accompanying affidavits and exhibits pp. 645–651, inc. March 24th, 1904.

CHARLES COWLES TUCKER,
Sol. for Complainant.
CHAS. C. COLE, *Sol. for Defendants.*

(Endorsed:) No. 1361. Charles F. Consaul *et al.*, appellants, *vs.* Horace S. Cummings, administrator. Stipulation as to printing record. Court of Appeals, District of Columbia. Filed Mar. 24, 1904. Henry W. Hodges, clerk.

Endorsed on cover: District of Columbia supreme court. No. 1361. Charles F. Consaul *et al.*, administrators, appellants, *vs.* Horace S. Cummings, administrator, &c. Court of Appeals, District of Columbia. Filed Sep. 30, 1903. Robert Willett, clerk.

WEDNESDAY, *May 4th, A. D.* 1904.

No. 1361.

CHARLES F. CONSAUL and IDA M. MOYERS, Administrators of Gilbert Moyers, Deceased, Appellants,
vs.
HORACE S. CUMMINGS, Administrator of George B. Edmonds, Deceased.

The argument in the above entitled cause was commenced by Mr. C. C. Cole, attorney for the appellants.

THURSDAY, *May 5th, A. D.* 1904.

No. 1361.

CHARLES F. CONSAUL and IDA M. MOYERS, Administrators of Gilbert Moyers, Deceased, Appellants,
vs.
HORACE S. CUMMINGS, Administrator of George B. Edmonds, Deceased.

On motion the appellants are allowed half hour additional time in the argument.

The argument in the above entitled cause was continued by Mr. C. C. Cole, attorney for the appellants, and by Mr. C. C. Tucker, attorney for the appellee, and was concluded by Mr. C. C. Cole, attorney for the appellants.

On motion, counsel on both sides are allowed to file supplemental briefs herein within six days.

No. 1361.

CHARLES F. CONSAUL and IDA M. MOYERS, Administrators of Gilbert Moyers, Deceased, Appellants,
vs.
HORACE S. CUMMINGS, Administrator of George B. Edmonds, Deceased.

Opinion.

(Mr. Justice Shepard delivered the opinion of the Court:)

This bill was filed September 16, 1889, by Horace S. Cummings, as administrator of the estate of George B. Edmonds, deceased, against Gilbert Moyers for an account and settlement of the affairs of a partnership alleged to have existed between the intestate and the defendant in the prosecution of certain claims against the United States.

Edmonds and Moyers had been separately engaged as attorneys and claim agents in the prosecution of such claims before what was called the Southern Claims Commission, during its existence, and afterwards before the Court of Claims under the Act of Congress known as the "Bowman Act."

On February 6 they entered into the following agreement:

"Know all men by these presents, in duplicate, that the undersigned, attorneys of Washington, D. C., are special partners in the prosecution of the cases named in the schedule hereto attached now pending before the United States Court of Claims and the Congress of the United States, the fee agreed to be paid by the client in each case being the percentum of whatever may be recovered as is stated herein, and the agreement between the undersigned being that each shall have half of said fees and that each shall pay one-half of the expense incident to the prosecution of same, which expense is not to exceed two and a half per cent. of the amount that may be allowed upon said claim.

"And it is hereby agreed and understood that the said Gilbert Moyers shall represent and be associated with me in the prosecution of said claims before the Court of Claims and the Congress of the United States as joint attorney of record.

"It is hereby understood and agreed that the under-signed Gilbert Moyers is to advance the expenses incident to the prosecution of said claims.

"Witness our hands this 6th day of February, 1888.

(Signed) GILBERT MOYERS.
(Signed) GEO. B. EDMONDS."

The bill alleges the death of George B. Edmonds, while a resident of the State of Virginia, and the appointment of complainant as the administrator of his estate by the County Court of Fairfax County in that State on August 22, 1899.

It alleges also, that a schedule of the cases referred to in the foregoing contract was attached thereto, that many of them resulted in judgments for recovery, the payment of which was provided for by Act of Congress approved March 3, 1899; and that defendant collected and retained the fees contracted for therein. An exhibit attached to the bill sets out a list of the adjudicated cases, by name and number with the date and amount of payment in each. The sum total of fees collected by the defendant, as recited in this exhibit, amounts to $26,380.25, of which the complainant claims one-half under the terms of the contract aforesaid. A separate allegation adds three other cases to the list, in which the fees have not been collected but for which warrants or drafts were about to be issued and delivered to defendant.

The bill further charges the refusal of the defendant to render any account of his collections of fees, and expenses paid in connection with the prosecution of the cases, and to pay over the amounts due to the estate of *Edwards*.

The prayers are, that defendant be restrained from receiving any drafts or collecting any drafts on account of judgments in which

said Edmonds had an interest; that a receiver be appointed to take charge of all of the assets of the alleged copartnership; that defendant be required to pay to the receiver all money that may have been collected by him on partnership account; that an account be taken between the said partners, and for a decree for the amount found to be due the complainant as the representative of said Edmonds.

The defendant's answer, on September 20, 1899, admits the agreement as set out, but denies any interest of Edmonds in the cases named in the exhibit to the bill, save those of Tappan and Fitzhugh. It admits the collection of the fees stated in the exhibit, but charges that the said Edmonds, in consideration of money paid him in the year 1892, relinquished to defendant all interest therein &c. It denies the possession by defendant of any money in which complainant has an interest, and alleged defendant's solvency, and the possession of a large estate, consisting of real and personal property, more than sufficient to meet the demands of the bill. On May 18, 1900, defendant filed a motion, supported by affidavit, for leave to amend his answer and correct certain mistakes of fact inadvertently made therein. This motion was granted and on May 26, 1900, defendant filed a supplemental answer, alleging, first, that the cases referred to in the partnership agreement were never scheduled or set out in any list attached thereto, so far as defendant has knowledge; second, that it was intended that one should be made out and attached to the agreement that had been executed in duplicate, but the same had not been done; third, that the admission of his answer that he had collected all the fees named in the exhibit to the bill was erroneous; and that the cases of Ubele, Russell, Baylor, Roberts, Shaw, and R. M. Johnston, set out therein, had not been prosecuted by the defendant, but by other attorneys, with whom defendant had no connection, and who had, on their own account, collected the fees therein. On June 5, 1900, the Court struck out of this answer the allegations relating to the schedule because the same had not been embraced in the leave to amend.

On June 13, 1900, the Court passed a decree to the effect that a special partnership existed between defendant and Edmonds by virtue of the agreement, and related to the prosecution of the cases described in the schedule attached thereto; that the complainant is entitled to an accounting, and to recover the balance found to be due; and that the cause be referred to the auditor to take said account. On June 20, an order was entered appointing receivers, and directing defendant to turn over to them all books and papers relating to the said partnership business, and to pay over to them the sum of $9,000.00. Defendant appealed from this last order, but the same was affirmed on December 6, 1900. See Moyers v. Cummings, 17 App. D. C. 269.

A long period of time was occupied in taking testimony before the auditor. The auditor's report was filed August 20, 1902. This report shows a careful examination of all the matters in controversy and is accompanied by schedules showing the several items of the account taken. Taking up the several cases of the exhibit in order,

the auditor found that all of them except five (Ubele, Russell, Baylor, Roberts and Shaw), were embraced in the partnership agreement. He reported the sum total of fees collected by Moyers in the remaining cases to be $23,828.57, and that Edmonds was entitled to one-half of the same. Against this one-half he charged the amount of $1470, found to have been advanced to Edmonds, and reported the balance of $10,601.04, as due to complainant as the representative of Edmonds. Both parties filed exceptions to the report. Before these were heard, Moyers filed a cross-bill (December 19, 1902), praying the recovery of the sum of $1470, and all of the expenses incurred by defendant in the prosecution of all of the claims in which Edmonds had an interest. The exceptions were heard on February 5, 1903. The court sustained one of the defendant's exceptions, namely, to the allowance of the fee collected in the case of R. M. Johnston, administrator of Samuel Heard, and overruled all others that had been taken by either party. Deducting the fee in the Johnston case from the balance found by the auditor, the Court confirmed the report in all other particulars, and entered a decree against defendant for the sum of $10,074.79 with interest thereon at six per cent per annum from September 16, 1899, until paid. The cause was ordered retained, the right being reserved to the complainant to apply to the court for an order or orders for the payment of any other and further sums that may hereafter come into the hands of the defendant on account of other cases that are embraced in the partnership, but in which collections have not yet been made. Defendant Moyers, having died after the entry of this decree, his administrators, Charles F. Consaul and Ida M. Moyers, made themselves parties in proper form, and have prosecuted this appeal therefrom.

As bearing upon so much of the controversy as relates to the prosecution of the partnership business, the advances made to Edmonds, and his alleged transfer of his interest in the fees of such business, it is to be added, that the evidence tended to show that Edmonds had been adjudged a lunatic by the Supreme Court of the District of Columbia on January 24, 1891, and Horace S. Cummings appointed his Committee; that he was confined in the insane asylum for a time, but was permitted to go at large thereafter; that he went about in 1892 and during that year received advances from Moyers, who testified that he had no knowledge that he had been adjudged a lunatic; that his Committee had never been discharged, and that he died in that condition, while residing in the State of Virginia, in October, 1896.

1. The first assignment of error relates to the interlocutory decree of June 13, 1900, which determined that a special partnership existed between Edmonds and Moyers, and directed the account to be taken. The contention is, that, "if any special partnership was ever created between the parties by the contract exhibited with the bill, it was dissolved and ceased to exist by the abandonment thereof by the said Edmonds and by the complainant as his Committee during the lifetime of the said Edmonds, and nothing was done by

or on behalf of said Edmonds under said contract to entitle him or his representative to an accounting."

The record furnishes no substantial foundation for this contention. The defence to the claim of Edmonds of an interest in the fees collected in the cases embraced in the agreement, is that in the year 1892, Edmonds, in consideration of certain sums of money advanced and paid to him by the defendant, agreed to accept the same in full settlement of his interest, and to return his copy of the agreement with an indorsement thereon showing said settlement. No evidence was offered, avowedly, to maintain any defence on the grounds of Edmonds' abandonment of the partnership agreement, and his failure to perform any services in its execution.

It appears, incidentally, that Edmonds took little or no part, practically, in the actual prosecution of the cases; but it does not appear that he was ever called upon, or even expected to do so. The agreement is ambiguous in respect of the particular nature of the services to be performed by each of the special partners, but rather seems to contemplate that the active prosecution of the cases should be conducted by Moyers. This was evidently the construction adopted and acted upon by Moyers. Referring to the agreement, in his testimony, he said: "It was not a partnership agreement. It was an employment of me to attend to certain business for him in the Court of Claims in regard to certain cases. You might style it a limited partnership. There was no general partnership." Again, one Hill who had a desk in the office of Moyers, and who was called as a witness by the latter to prove the payment of $500 by him to Edmonds, said that he had read the "partnership agreement by which Col. Moyers was to take charge of Mr. Edmonds' business: I know that Col. Moyers had agreed to take charge of Mr. Edmonds' business and conduct it for him; I knew that in 1888 when I was in the office with Col. Moyers." We have before mentioned the apparent acquiescence of Moyers in the inactivity of Edmunds; there being no evidence tending to show that he ever called upon him for any assistance. "In cases where the language used by the parties to the contract is indefinite or ambiguous, and hence of doubtful construction, the practical interpretation of the parties themselves is entitled to great, if not controlling influence. The interest of each generally leads him to a construction most favorable to himself, and when the difference has become serious and beyond amicable adjustment, it can be settled only by the arbitrament of the law. But in an executory contract, and where its execution necessarily involves a practical construction, if the minds of both parties concur, there can be no great danger in the adoption of it by the Court as the true one." Chicago v. Sheldon, 9 Wall. 50, 54; Topliff v. Topliff, 122 U. S. 121, 131.

2. The second assignment is that the court erred "in decreeing that there was no valid and binding purchase made by the said Moyers of the interest of the said Edmonds in said claims."

Without passing upon the question whether a binding contract could have been made with Edmonds for the assignment of his interest in the fees expected to be realized under the contract, on ac-

count of his pre-established lunacy, it is sufficient to say that we find no satisfactory proof that such an assignment or relinquishment was ever made. The relations established between the parties by the agreement imposed upon Moyers the burden of making clear and satisfactory proof of the settlement, and the release by Edmonds of his interest in the fees to accrue thereunder.

The entries in Moyers' books show certain advances and "loans" to Edmonds, who was impecunious, of sums ranging from $10 to $100, between January 17 and July 23, 1892. These entries speak for themselves. The evidence of the payment of the final sum of $500, is meager, and in so far as it relates to the settlement and release, of which this payment is claimed to have been the concluding act, falls short of the requisite standard of certainty.

3. The third assignment of error seeks to raise the question of the right of the complainant to bring this suit as the administrator of the estate of George B. Edmonds. The contention is that the Virginia Court of Probate had no jurisdiction to appoint an administrator of said estate, and consequently that its order was a nullity.

The allegation of the third paragraph of the bill that complainant had been appointed administrator by the Virginia Court was expressly admitted in the answer, and objection to the validity of that appointment has been raised for the first time, on this appeal. The objection is founded on certain evidence, brought out incidentally, tending to show that intestate had become a resident of the District of Columbia in 1872; but also that he had spent some time in a soldiers' home in Virginia after 1891, and had gone again to that State in February, 1896, by arrangement of his Committee, where he remained until his death in October of the same year.

Without regard to the irregular manner in which this contention has arisen, we are of the opinion that the issuing of letters of administration must be accepted as valid. R. R. Co. v. Gorman, 7 App. D. C. 91, 106.

4. The fourth assignment of error is founded on the action of the Court in overruling the exceptions taken to so much of the auditor's report as included the claim cases of Cate, Davidson, Bagnell, Hunt, Ladd, Harding, Williams, Hornbaker, Merrill, Ehs, Burgwyn, and Fauber, in the fee agreement between the parties.

A great deal of testimony has been directed to the question of the exclusion from the partnership account of these cases, the combined fees in which amount to $12,788.17.

In the first place, it was proved beyond question that about 1892, Edmonds delivered to Cummings (his Committee) his own copy of the agreement to which was then firmly attached a list of the cases purporting to be the schedule referred to therein. This list includes the cases above named. After Edmonds' death, original papers relating to the large majority, if not to all, of the cases enumerated in the schedule were found in trunks or boxes belonging to him. The papers were enclosed in separate "jackets" marked with the name of the case. These papers as well as private papers, relating to the cases in question, produced by Moyers, together with his dockets and books of entries, were produced before the auditor,

before whom also much of the oral testimony was taken. The evidence relating to these matters, as presented in the printed record, is confusing, to say the least of it. The great mass of these papers have been omitted from the record. In some instances, they are described in the record, and with regard to a great portion of them a stipulation was made to supply omissions from the transcript. This stipulation is in such condensed form that its bearing is general and not particular. The auditor's report indicates a careful examination into the particulars of each case in the reference. As regards the Hunt case, in which the fee collected was $9,722.50, making it the one of the greatest consequence, the auditor reports: "The evidence shows that Edmonds was employed as attorney in this claim as early as May or June 1886 and had a fee agreement, which is produced here, dated June 1, 1886. The defendant's first appearance in the case is in October 1888." This, and similar facts in regard to other cases, tend to establish the genuineness of the schedule attached to Edmonds' copy of the contract in which it is included. Moyers produced no schedule and did not account for his omission to have one made and attached—an omission rather strange considering the nature of the contract and the fact that Moyers had cases of his own of the same nature in which Edmonds was not interested. The omission becomes stranger still, when we find in the record that Edmonds presented a contract to Moyers for signature, which Moyers objected to, and that Moyers then prepared the contract that was executed, and caused it to be typewritten by one of his clerks. The unsigned contract evidently contemplated a list of cases, but refers to no schedule; but the substituted contract expressly refers to an attached schedule. Edmonds having died before the controversy arose, there was no further evidence obtainable on his behalf. We can not find from the opposing testimony that this schedule was deliberately prepared by Edmonds without foundation and for the purpose of defrauding Moyers. Recurring to the Hunt case, above mentioned, Moyers was unable to produce a contract with the party and produced no written evidence showing an employment of himself individually. His own testimony relating particularly to the transactions with Edmonds is, of course, not competent. The whole matter in controversy relating to this partnership was referred to the auditor, upon such evidence as had been given and upon such other as might be taken before him, with direction to report his conclusions. Having done this his findings of fact were reviewed by the justice presiding in the equity court, concurred in, save as regards a single item, which is not now in controversy, and carried into the decree. "Clearly then," in the language of Chief Justice Fuller, "they are to be taken as presumptively correct, and unless some obvious error has intervened in the application of the law, or some serious and important mistake has been made in the consideration of the evidence, the decree should be permitted to stand." Crawford v. Neal, 144 U. S. 585, 596; see also Furrer v. Ferris, 145 U. S. 132, 134; Morgan v. Daniels, 153 U. S. 120, 124.

It may be admitted that there is some doubt respecting the in-

clusion of some of these claims in the partnership agreement, but that doubt is not sufficient to warrant the rejection of the auditor's findings, that have been examined and approved by the court to which they were reported. Moreover, the doubt has been largely occasioned by the failure of Moyers to obtain the schedule of the cases, and the careless manner in which he seems to have kept his office records and entries.

5. The fifth, sixth, and seventh assignments of error, relating to credits claimed by Moyers for expenses incurred in the prosecution of the cases, and for extra services, fees, and charges, may be considered under one head, and in a different order from that of their presentation, for the sake of convenience.

(1) The items claimed on account of fees paid to attorneys and agents in the matter of procuring legislation by Congress looking to the reference and payment of the claims, were properly denied. Such services are not the subject of lawful contrast. Owens v. Wilkinson, 20 App. D. C. 51.

(2) Nor was the defendant entitled to any credits for extra services as claimed. If any such were rendered in the matter of urging and procuring legislation they can not be made a legal charge as we have just seen. It does not appear that legal services were rendered beyond those usually contemplated in conducting litigation of the kind. The only foundation for the claim would seem to be in the fact that Moyers performed all the services in conducting the litigation to an end, because of Edmonds' failure to assist. That contention has been disposed of under the first assignment of error.

(3) The exception taken to the refusal to allow the expenses incurred in the prosecution of the cases presents another question of some difficulty. Expenses were allowed by the auditor in a great many of the cases included in the schedule showing successful termination and the collection of the judgments. The amounts of these allowances we do not understand to be questioned by the appellants. The controversy applies to a great number of other cases; some pending, but the majority long since determined adversely to the claimants. Those in pending and unsettled cases may be regarded as not now in question; for the case, as we have seen, has been ordered to be retained to the end that orders may be made in such of these as may be hereafter collected.

The question, then, may be confined to the expenses claimed as having been incurred, and paid by Moyers, in the unsuccessful cases, and which consist of fees and costs of depositions, fees to local attorneys, travelling expenses and so forth. Regarding these the auditor reported as follows: "I think a fair interpretation of this agreement is that each claim should be settled between the partners promptly upon the receipt by Moyers of the attorneys' fee and such settlement should include the expenses advanced by Moyers under the terms and limitations of the partnership agreement. Holding these views, I have declined to make any allowance in this account for the expense said to have been incurred in the prosecution of cases other than those set forth in the account herewith." In so far as this conclusion embraces the expenses in the cases in which col-

lection of fees has been made, or even in those where the judgments have not yet been collected, it is of no material importance, but we cannot concur with the court in its adoption as regards the claims that have been denied recognition. It is to be presumed that the parties had some hope of success in each of these cases—enough, at least, to warrant their prosecution; and they knew that the prosecution must entail some expense. Moyers agreed to advance these expenses on joint account; but one-half was to be a charge against Edmonds. In the absence of express language to that effect it is unreasonable to suppose that Moyers intended to take the entire risk of success in each case, looking to Edmonds for one-half of the expense incurred in the successful cases alone, and we do not regard the contract as requiring such a construction. In our view of the meaning of this contract, we are of the opinion that Moyers is justly entitled to credit in the accounting for one-half of the expenses incurred by him in the prosecution of each of these unsuccessful cases. It is true that the evidence relating to the several items of these expenses is uncertain—an uncertainty largely due to the manner in which Moyers kept his accounts. Nevertheless, we are of the opinion that from an examination of those accounts or the statement made by him of the same, in connection with such information as may be derived from the records of the Court of Claims, and the general average of expenses in other cases of the same nature, that have been ascertained and allowed, a fair and reasonable estimate may be made. This estimate should not include any part of the general office expenses of Moyers, as these are embraced in his undertaking to conduct the prosecution of the cases; but in other respects there is no reason why it should not be liberally made, in view of the fact that the large balance of fees for distribution is the result of Moyers' exertions and expenditures of money during the long period in which he was engaged in the prosecution of the cases comprehended in the agreement with Edmonds, who rendered no substantial assistance, and was, moreover, supported in part by money advanced to him by Moyers beyond the requirements of that agreement.

6. As the case must be remanded for another reference to the auditor to ascertain and allow the credits to which Moyers is entitled for expenses in the prosecution of the unsuccessful claims, it is proper to direct attention to another item of credit for which no allowance has been made. By the terms of the decree ordering Moyers to pay the balance found to be due on the accounting, interest has been awarded against him from the time when he should have accounted to the plaintiff therefor, namely, September 16, 1899. The appellants offer no objection to this award of interest, but complain that a similar award was not made respecting the sum of $1470 found to have been advanced by Moyers to Edmonds in 1892. We are of the opinion that this claim is a just one, and that in We are of the opinion that this claim is a just one, and that in restating the account interest on that amount should be allowed in favor of Moyers from, say, the first day of January, 1893, until September 16, 1899.

Save in respect of the particular errors pointed out herein above, the decree is correct; but for those errors it will be reversed and the cause remanded, with direction to refer the account to the auditor that he may ascertain the credits to which Moyers is entitled on account of the expenses incurred in the unsuccessful cases, and the interest upon the $1470 advanced by him, at the rate of six per cent per annum from January 1, 1893, to September 16, 1899; and with further direction to take such proceedings upon the auditor's report as shall not be inconsistent with this opinion.

Each party will be taxed with one-half of the costs incurred on this appeal. It is so ordered.

Reversed.

TUESDAY, *May 24th, A. D.* 1904.

No. 1361, April Term, 1904.

CHARLES F. CONSAUL and IDA M. MOYERS, Administrators of Gilbert Moyers, Deceased, Appellants,
vs.
HORACE S. CUMMINGS, Administrator of George B. Edmonds, Deceased.

Appeal from the Supreme Court of the District of Columbia.

This cause came on to be heard on the transcript of the record from the Supreme Court of the District of Columbia, and was argued by counsel. On consideration whereof, It is now here ordered, adjudged and decreed by this Court that the decree of the said Supreme Court in this cause be, and the same is hereby, reversed; each party will be taxed with one-half of the costs incurred on this appeal, and that this cause be, and the same is hereby remanded to the said Supreme Court with direction to refer the account to the Auditor that he may ascertain the credits to which Moyers is entitled on account of the expenses incurred in the unsuccessful cases, and the interest upon the $1470 advanced by him, at the rate of six per cent per annum from January 1, 1893, to September 16, 1899, and with further direction to take such proceedings upon the Auditor's report as shall not be inconsistent with the opinion of this Court.

Per MR. JUSTICE SHEPARD.
May 24, 1904.

In the Court of Appeals of the District of Columbia, April Term, 1904.

No. 1361.

CHARLES F. CONSAUL and IDA M. MOYERS, Administrators of Gilbert Moyers, Deceased, Appellants,

vs.

HORACE S. CUMMINGS, Administrator of George B. Edmonds, Deceased, Appellee.

Motion to Modify and Enlarge the Decree.

And now come the appellants, by their attorneys, and move the Court to modify and enlarge the decree of this court so as to authorize the Auditor to ascertain and report the expenses paid by Gilbert Moyers in the pending claims mentioned in these proceedings, as well as those disallowed or unsuccessful, and also to authorize the Auditor to take additional evidence and make a further report upon the question whether the claims of John B. Davidson, Samuel Bagnell, Annie Hunt, Hattie E. Ladd, James Harding, Wilson W. Williams, J. R. Hornbaker, Susan Merrill, John Ehs, J. A. Bergman and William A. Fauber, mentioned in Appellants' exceptions to the Auditor's report, were included in the partnership agreement mentioned in this cause, and if he shall find that some or all of them are not so included to restate the account accordingly.

This motion is based upon the following grounds, to wit:

1st. After the passage of the decree in this cause from which the present appeal was taken the case was again referred by the court below to the Auditor to state an account in relation to other claims that had been appropriated for and which, it was claimed by the appellee, were embraced in the partnership contract and which were not embraced in the bill in this cause, and the Auditor has made a report thereon which is pending upon exceptions by the appellants in the court below. In that reference the Auditor rejected the claim made by the appellants for expenses in the pending and unsuccessful causes. So far as is now known there will be no further reference to the Auditor in said cause, except the one to be made in pursuance of the mandate of this Court, and if the appellants are to be allowed expenses in the pending claims that have not been finally disposed of it must be done in the reference to be made in pursuance of said mandate. And it is respectfully submitted that as both the said special partners are now deceased, that upon the final adjustment of the accounts between said estates, the estate of the said Moyers is entitled to be allowed for such expenses as he in good faith paid out in the prosecution of the claims remaining undisposed of, as well as those which have been rejected. It is assumed in the opinion of this court that the question of the expenses paid by Moyers in pending claims would be disposed of in the future reference to the

Auditor to be made pursuant to the order of the Court below retaining this cause for further proceedings. But, as hereinbefore shown, if the Auditor's report, to which exceptions are now pending in the Court below, should be confirmed, there would be no further reference to the Auditor so far as is now apparent, except under the mandate of this Court.

2nd. Since the death of the said Gilbert Moyers the appellants have been examining his old papers, of which there is a very large mass, from time to time as convenience permitted, and a few days after the argument of this cause in this court they discovered amongst the papers of the said Gilbert Moyers, in a place where they would not have naturally looked for it, a letter in the handwriting of the said George B. Edmonds bearing date at the National Soldiers' Home, Virginia, December 17th, 1889, the statements and contents of which show clearly that there was no schedule of claims attached to the partnership contract of February 6th, 1888, mentioned in the bill, at the time of the execution thereof, nor had there been such a schedule presented to the said Moyers prior to the date of the said letter. The original of said letter has been exhibited to the counsel for the appellee, and a copy thereof is filed herewith, and the original will be exhibited to the court or counsel for the appellee at any time when requested. The affidavit of the appellant, Ida M. Moyers, as to the circumstances of the discovery of said letter is also annexed hereto. The opinion of this court, as well as the action of the Auditor and Court below, treats the schedule attached to Edmond's duplicate of the contract which was produced by the appellee as having some weight as evidence that the cases included in it were partnership cases, but this letter from Edmonds clearly shows that it is entitled to no weight whatever as evidence. It also appears from this letter that prior to the date of it Moyers had no notice or knowledge of what particular cases Edmonds claimed were his. By reference to Moyers' docket entries it will appear that in the following cases, mentioned in the appellants' exceptions to the Auditor's report, the said Moyers had them on his books and had done considerable work in each of them prior to the date of this letter, to wit: the claim of Merrill (Rec. p. 382), Cate (Supplement to Original Brief, p. 1), Davidson (Supplement to Original Brief, p. 2), Hunt (Supplement to Original Brief, p. 7), Williams (Supplement to Original Brief, p. 11), and Ehs (Supplement to Original Brief, p. 16). And as to the cases of Merrill and Ehs, he had them on his books prior to the date of the partnership contract, and was in correspondence with the claimant in the Hunt case prior to the date of the partnership contract (Original Brief, p. 38). It is submitted that this letter, together with the other evidence now in the record bearing upon that point, ought to have the effect of excluding at least the claims last-above named.

It is not claimed that Edmonds fraudulently made up the schedule, but it is claimed that he made it up inadvertently and without sufficient knowledge. His letter acknowledges that there were cases in it which were in the hands of attorneys other than Moyers,

and the Court below, as well as this court, found this to be a fact. He was quite as likely to include in it cases that were already in the hands of Moyers as in those of other attorneys. The evidence in the record referred to in appellants' original brief from pages 23 to 33, inclusive, shows that after the date of that letter Edmonds was in Moyers' office conferring with him and his clerks as to what cases were referred to in the partnership contract and having entries made in relation to them in Moyers' dockets. It is respectfully submitted that in as much as the evidence on behalf of the appellee fails to prove that the schedule was attached to the contract at the time it was signed; that that on behalf of Moyers shows that it was not; that the evidence of appellee proves that Moyers denied the authenticity of the schedule when first presented to him; that the Auditor and the Court below found that there were cases embraced in it which were not partnership cases, and that this Court, in its opinion, has decided that "it may be admitted that there is some doubt respecting the inclusion of some of these claims in the partnership agreement" upon the evidence as it now appears in the record, that the ends of justice demand that when the case goes back to the Auditor the appellants ought to be permitted to introduce in evidence the letter referred to in this motion and any other evidence that may then be in their possession tending to throw light upon whether the cases heretofore referred to, embraced in their exceptions to the Auditor's report, should be included in the partnership accounting. As the case must go back to the Auditor for other purposes this additional inquiry would consume no considerable additional time, and no injustice could result to the appellee, while great injustice might result to the appellants by denying this privilege. This motion is made for the reason that under the opinion and mandate, as they now stand, it might be contended that the appellant would not be entitled to present to the Auditor anything other than the question of the expense in the disallowed cases.

COLE & DONALDSON,
R. S. HUIDEKOPER,
Attorneys for Appellants.

DISTRICT OF COLUMBIA, *To wit:*

Ida M. Moyers, being duly sworn, says upon oath that she is the daughter of the late Gilbert Moyers, deceased, and one of his administrators and one of the appellants in the above entitled cause; that during all the time since the death of her said father she has devoted all the time she could spare from her other duties in going over his papers, of which there is a large mass, for the purpose of selecting and preserving therefrom all that she might find of value or use; that she lived in the same house with her father to the time of his death; that during the last ten or twelve years of his life there was removed from his office to his residence from time to time and placed in the cellar therefrom a large mass of papers, which had accumulated in his office in the transaction of his business; that some of these papers were in pigeon holes in wooden cases; others tied up

in bundles and still others loose; that they consist of letters, receipts, checks and other papers connected with his business, and in all there are several thousands of them; that a few days after the argument of this case, in this Court, while she was going over some of these papers in the manner and for the purpose aforesaid, she discovered a letter purporting to be from George B. Edmonds to her father bearing date at the Soldiers' Home, Hampton, Virginia, the 17th day of December, 1889, in relation to the claims mentioned in this suit; that she has become familiar with the handwriting of the said Edmonds by examining frequently, from time to time, papers filed in this cause, proved or admitted to be in his handwriting, and she verily believes that said letter is the genuine handwriting of the said George B. Edmonds. A correct copy of said letter is appended hereto.

Affiant further says that at the time of the discovery by her of the said letter she had carefully gone over about one-third of the papers aforesaid, but since that time she has looked through all the residue of them for the purpose of ascertaining whether any schedule of said claims or any other letter from said Edmonds was amongst them, and while she did not make a critical examination of each paper she looked with sufficient care to enable her to state that there is and was no schedule or list of said claims or any of them amongst them. That she has also searched amongst her father's papers left in his office and there is no such list or schedule there. That she has searched through her father's letter press copy books covering the time of several months subsequent to the date of said letter and she finds no letter from said Moyers to said Edmonds in reply to the one herein referred to.

Affiant further says that the last three or four years of her father's life, and especially during all the time after the institution of this suit against him, he was in very delicate health, sick and unable to attend to business for a considerable portion of the time, and unable to give that attention to his defense of this suit, which he otherwise undoubtedly would have given it.

IDA M. MOYERS.

Subscribed and sworn to before me this 1st day of June, A. D. 1904.

WALTER F. DONALDSON,
Notary Public, D. C.

Copy of Letter.

NATIONAL SOLDIERS' HOME, VA.,
Dec. 17, 1889.

Gilbert Moyers, Esq.

SIR: Today I will send you a list of my cases, and the number of the cases set down on the margin. Last winter I sent every case to Gen. Stone, except five or eight cases in Gen. Lee's district and one — Peter Clark in another Virginia district, and I expected

they would all be sent down by Gen. Stone's committees but for some reason they were not sent down as I understood they would be last winter, and the same the year before.

Some of these cases have other attorneys in them; but I did not know it at the time I took the cases, and I think there was no other attorney at the time I took them.

Now if the order of the court amounts to anything, they could not discharge me without paying me. And I desire every — tested and if they will pay me, then they can hire other attorneys. One case is Mr. Fobrey case, another case is Loftus Allen. In this last case my power of attorney was executed first. Mr. Dye filed his power of attorney before I did mine, but my power of attorney was executed before his was. I had filed in Congress to have the case sent to the Court of Claims.

I filed with the Clerk my power of attorney and he marked my name down as attorney, but I see my name is scratched out, by whom I do not know.

I enclose a letter from a Mr. Bell, and I think it is the same name down on the list I sent you.

Very respectfully,

GEO. B. EDMONDS.

(Endorsed:) No. 1361. April Term 1904. Charles F. Consaul and Ida M. Moyers, Administrators of Gilbert Moyers, deceased, Appellants, vs. Horace S. Cummings, Administrator of George B. Edmonds, deceased, Appellee. Copy of Motion of Appellants to Modify and Enlarge Decree. Court of Appeals, District of Columbia. Filed June 3-1904. Henry W. Hodges, Clerk.

TUESDAY, *June 7th, A. D.* 1904.

No. 1361.

CHARLES F. CONSAUL and IDA M. MOYERS, Administrators of Gilbert Moyers, Deceased, Appellants,

vs.

HORACE S. CUMMINGS, Administrator of George B. Edmonds, Deceased.

The motion of the appellants to modify and enlarge the decree of this Court in the above entitled cause was submitted to the consideration of the Court by Mr. C. C. Cole, in support of motion, and by Mr. C. C. Tucker in opposition thereto. On motion, leave is granted the appellee to file brief herein.

[Stamped:] Court of Appeals, District of Columbia. Flied Jun-7, 1904. Henry W. Hodges, Clerk.

Court of Appeals, District of Columbia, April Term, 1904.

No. 1361.

CHARLES F. CONSAUL and IDA M. MOYERS, Administrators of the Estate of Gilbert Moyers, Deceased,
vs.
HORACE S. CUMMINGS, Administrator of the Estate of George B. Edmonds, Deceased.

Motion by Appellee for a Reargument or Modification of the Decree and Opinion of this Court.

Chas. Cowles Tucker, for the Appellee.

Court of Appeals, District of Columbia, April Term, 1904.

No. 1361.

CHARLES F. CONSAUL and IDA M. MOYERS, Administrators of the Estate of Gilbert Moyers, Deceased,
vs.
HORACE S. CUMMINGS, Administrator of the Estate of George B. Edmonds, Deceased.

Motion by Appellee for a Reargument or Modification of the Decree and Opinion of this Court.

Comes now the appellee and moves the court, upon the following grounds, for a reargument of this cause or, in event that such motion should be denied, that the decree of this court be modified or changed in the particulars mentioned:

The Decree Should be One of Affirmance and Not of Reversal.

This court, although in form having reversed the entire decree appealed from, has held it to be correct in all particulars save two unimportant ones, which are to the effect that Moyers should have been given credit for expenses incurred in rejected cases and for interest on $1,470 advanced by him to Edmonds. Full and complete justice will be done to the appellants and great expense and delay to the appellee avoided if the court will change the form of its ruling and mandate and affirm the decree appealed from, with a statement in its opinion that in the pending or in any subsequent reference to the auditor Moyer's estate shall be allowed these credits. As stated in the opinion of this court, the decree appealed from restrains the cause and authorizes additional references at any time. There is a reference now pending and undisposed of, and also a motion by the complainant for a new reference to the auditor in either of which the credits which this court has decided should be allowed Moyers could be given him, and there is now in the hands

of the receivers over $6,000 of fees, more than ample to secure Moyers' estate for any such credits so allowed him; so that no injustice could be possibly done the appellants if this course were pursued. (It will be recalled that the maximum amount the appellants claim for expenses in the rejected cases is, as stated on page 14 of their supplemental brief, $2,697.74.) In fact, it would be for the benefit of the appellants for the court to take this action, inasmuch as the decree of this court would then be a final decree, from which they might, without further expense and delay, appeal to the Supreme Court of the United States, while much time and expense would be saved to the appellee. No supersedeas bond was given by the appellants on this appeal, and it was necessary for the appellee, in view of the unconscionable delay of Moyers (a delay of over a year) in perfecting his appeal and getting ready for a hearing in this court, to institute proceedings to enforce the decree, and there are now pending in the lower court a creditors' bill in equity to enforce the decree and a proceeding by way of attachment, and there is also pending a proceeding in the State of Maryland by way of attachment to enforce the decree. If the decree appealed from is reversed these proceedings will all probably fall and the appellant, who, it should be remembered, is acting in a representative capacity, will be obliged to suffer the expense incurred in bringing them, and this through no fault of his own, but in an honest attempt to save the estate which he represents from loss.

Of course an expression, in the opinion of this court, that Moyers should be allowed these credits in the pending references or in any references would be tantamount to a mandate to the lower court to allow such credits. In order to prevent the remotest possibility of an injustice to the appellants, this court might affirm the decree appealed from on condition that the appellee file within a prescribed time a written consent to the opening of the report of the auditor, now pending in the lower court on exceptions, and a reference to the auditor to restate the account, so as to allow the appellants credit for expenses incurred in rejected or disallowed cases, etc. So far as the interest on the $1,470 is concerned, that amount being easily calculated, this court having stated that it should be computed from January 1, 1893, to September 16, 1899, the credit could be given the appellants either in this court by modifying the decree appealed from and then affirming it, or could be given in the pending or in a subsequent reference.

In considering this suggestion the court might refer to the portion of the transcript not printed, which contains much of the proceedings in the cause subsequent to the decree appealed from.

An additional reason why this suggestion should be adopted by the court is that the failure of Moyers to receive the credits, which this court now holds he is entitled to, is largely, if not wholly, his own fault. This court in its opinion states that the evidence relating to such expenses is uncertain, an "uncertainty largely due to the manner in which Moyers kept his accounts;" and the auditor in his report says, "the testimony of Moyers is indefinite and unsatisfactory so far as it relates to these alleged expenditures, and is not,

in my judgment, sufficient to warrant an allowance of any portion of these expenses in this accounting, even if I were of the opinion that any allowance would be proper under my interpretation of the contract provisions" (R., p. 209). This statement of the auditor was made when he had before him all the statements of expenditures made by Moyers, his diary, all of the Court of Claims records, and other documents which were not before this court, not having been included by the appellants in the transcript of the record. Two years were allowed Moyers by the auditor in which to produce his testimony, and if his administrators are now to be given another opportunity to make out this claim for credit, it would seem only right that it should be done without subjecting the appellee to the additional cost and expense and the delay which will follow reversal of the decree appealed from, especially when it can be done in the manner pointed out without any injustice whatever being done to the appellants.

What Are "General Office Expenses" Should be Further Defined by This Court.

This court in its opinion says that the credit for expenses in rejected cases to be given Moyers shall "include no part of the general office expenses of Moyers, as these are embraced in his undertaking to conduct the prosecution of the cases." Is the cost of typewriting the briefs filed in the Court of Claims by Moyers a part of his general office expense? This question is bound to present difficulties when the matter again comes before the auditor. On this subject the auditor in his report said: "As to the cost of briefs in this case, it may be noted that the proof here is still destitute of any sufficient showing that the cost of filing these briefs was paid for outside of the regular office work of the defendant" (R., p. 209). Notwithstanding this statement, however, the auditor allowed the defendant the estimated cost of typewriting the briefs in the case actually appropriated for where briefs were shown to have been filed. Of the total expenses incurred by Moyers in the cases embraced in this appeal, amounting to $437.48, $311.48 was for typewriting briefs and $126.13 only for the cost of the depositions. In view, therefore, of the fact that there are seventy-four cases in which this court says the defendant was entitled to his expenses, it becomes extremely important to know whether he is to be allowed for the cost of typewriting briefs, even though it appear that the briefs were typewritten in his office by his regularly employed clerks. If the appellants are to be allowed these items of expense, to be estimated at from 15 to 25 cents a page of typewritten matter, the sum total of the allowance will probably amount to more than Moyers pair his typewriters in salaries for the period during which the briefs were being prepared.

Interest on the $1,470.

This court in its opinion states that Moyers should be allowed interest on the $1,470 advanced Edmonds from January 1, 1893, until

September 16, 1899. To do exact justice in this respect, it is respectfully submitted that interest, if allowed at all, should be allowed only on $1,470 less $203.75, the amount of Edmonds' interest in the Susan Merrill fee. It will be remembered that this Merrill case was appropriated for in 1891, and not in 1899, when all of the other cases were appropriated for; and yet Moyers never paid Edmonds his share of the fee, or, if he did, it was part of the $1,470 he advanced Edmonds and upon which it should be credited. In either aspect, therefore, Moyers should not have interest on the $203.75 for this period of six years.

The Costs in this Court.

This court has required the appellee to pay one-half of the costs incurred in this court. These costs amount, roughly speaking, to $600. It is respectfully submitted that under the circumstances the appellee should not be required to pay any of these costs. As pointed out above, if Moyers, in the two years the case was before the auditor, could have been induced to put in his testimony respecting his expenditures with any degree of clearness, or if the appellants had included in the transcript of the record all of the exhibits and papers which were before the auditor, there would have been no reason for the reversal of the decree appealed from, but that decree might have been modified so as to allow the appellants the small credits to which the court has said they were entitled. Under these circumstances and in view of the fact that it was wholly Moyers' own fault that he was not given these credits, it is respectfully urged upon the court that the appellee should not be made to suffer for Moyers' sins of omission.

Again, if the record in this case be examined, it will be observed that much of it was not printed, and that such portions was absolutely immaterial and irrelevant to the case as presented to this court. After the decree appealed from was rendered, the defendant Moyers designated in the court below the portions of the record which should be included in the transcript to be filed in this court. This was followed by a designation by the complainant of other portions of the record to be included in the transcript. The defendant then filed another designation (R., p. 318) without the knowledge of the complainant and without the service of a copy of it on him, as required by the rules of the court, and the clerk of the court below was induced to make up the transcript in accordance with this last-mentioned designation. It was found that the transcript so made up contained an immense amount of matter, as will appear from an inspection of the index, which had no bearing whatever upon the issues presented by the appeal and which was omitted in printing the record in this court. In order to get the record in some sort of shape for the consideration of this court, the appellee agreed to and did enter into the stipulation found on pages 384-387 of the record, thus saving many hundreds of dollars to the appellants, for it would have cost that much to have printed the documentary evidence referred to in this stipulation. The effect of this is that if the

appellee is required to pay one-half of the costs of this appeal, he will be charged with one-half of the costs paid to the clerk of the lower court in making up that portion of the transcript which has been omitted in the printing, and which should have never been lodged in this court.

In view of these considerations, and the further one that as matter of fact the credits to be allowed the appellants will hardly amount to the one-half of the costs incurred in this court, and which, as the case now stands, the appellee is required to pay, it is respectfully submitted that the appellee should be relieved from paying any portion of these costs, or that at least the proportion to be paid by him should be greatly reduced, say to from 10 per cent. to 25 per cent. of such costs.

Respectfully submitted.

CHAS. COWLES TUCKER,
For the Appellee.

TUESDAY, *June 7th*, A. D. 1904.

No. 1361.

CHARLES F. CONSAUL and IDA M. MOYERS, Administrators of Gilbert Moyers, Deceased, Appellants,
vs.
HORACE S. CUMMINGS, Administrator of George B. Edmonds, Deceased.

The motion of the appellee for a re-argument or modification of the decree and opinion of this Court in the above entitled cause, was submitted to the consideration of the Court by Mr. C. C. Tucker, in support of motion, and by Mr. C. C. Cole, in opposition thereto, with leave to appellants to file brief herein if so advised.

Opinion Denying Appellants' Motion to Modify and Enlarge Decree.

This motion is denied.

Questions relating to claims that may have been referred to the Auditor under the provision of the decree appealed from retaining the cause for their consideration and determination are not before us on this appeal, and hence no order can be made governing their disposition or allowance.

For this reason there is nothing in the decree of this Court to preclude a reference or re-reference of such claims to the Auditor if the Justice presiding in the Equity Court shall deem it necessary or proper so to do.

By the Court.

R. H. ALVEY, *Ch. Justice.*

June 8, 1904.

WEDNESDAY, *June 8th*, A. D. 1904.

No. 1361. April Term, 1904.

CHARLES F. CONSAUL and IDA M. MOYERS, Administrators of Gilbert Moyers, Deceased, Appellants,

vs.

HORACE S. CUMMINGS, Administrator of George B. Edmonds, Deceased.

On consideration of the Appellee's motion for a re-argument or modification of the decree and opinion of this Court, it is by the Court this day ordered that said motion be and the same is hereby denied.

Per MR. CHIEF JUSTICE ALVEY.

June 8, 1904.

In the Court of Appeals of the District of Columbia.

No. 1778.

CHARLES F. CONSAUL ET AL., Appellants,
vs.
HORACE S. CUMMINGS, Adm'r, &c.

a Supreme Court of the District of Columbia.

In Equity. No. 20802.

HORACE S. CUMMINGS, Administrator of George B. Edmonds, Deceased, Complainant,
vs.
CHARLES F. CONSAUL and IDA M. MOYERS, Administrators of Gilbert Moyers, Deceased, Defendants.

UNITED STATES OF AMERICA, *District of Columbia, ss:*

Be it remembered, that in the Supreme Court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed, and proceedings had, in the above-entitled cause, to wit:—

1 *Auditor's Report.*

Filed January 5, 1904.

In the Supreme Court of the District of Columbia.

Equity. No. 20802.

HORACE S. CUMMINGS, Administrator of George B. Edmonds,
vs.
GILBERT MOYERS.

Under the decree passed in this cause on the third of January, 1902, I proceeded with the reference and on the twentieth of May 1903 prepared and filed a statement of account of the receivers showing their collection of fees in certain of the cases covered by the said decree. The order of reference directs me to ascertain and report whether the said fees or any of them are due and payable to the defendant alone or to the defendant and the complainant as administrator, and if the latter to state a partnership account in the premises.

A considerable amount of evidence in the form of oral testimony and documentary exhibits, is submitted relevant to the question whether the claims specified in the order of reference were partnership claims under the agreement of February 6, 1888.

Taking these claims severally I find the following facts and conditions established in the proof:

Claim of Ernest Neill, Administrator of Joseph Egner.

2 The original petition in this claim was prepared by the said George B. Edmonds and presented to Congress about the 7th of June 1886. The petition prayed reference of the claim to the Court of Claims pursuant to the Act of Congress of March third, 1883. The evidence submitted includes correspondence by Edmonds with the representatives of the said Egner relative to the claim. In compliance with the petition the case was referred to the Court of Claims and the claim was allowed. The fee was collected by the Receivers. I find this to be a partnership claim.

Claim of William Goddard.

The original petition, praying reference of this claim to the Court of Claims, was prepared by the said George B. Edmonds and presented to Congress in 1886; thereupon the case was referred to the Court of Claims and after hearing, the claim was allowed. Among the evidence submitted there is also a contract between Edmonds and the claimant for the prosecution of the claim and the allowance of fee. I find this to be a partnership claim.

Claim of Edward S. Nace, Administrator of John M. Nace.

The original petition in the matter of this claim was prepared by George B. Edmonds in the life time of the said John M. Nace and signed by him. Edmonds' name also appears on the back of the petition. As prayed therein the claim was referred to the Court of Claims and among the documents furnished from the records of that Court besides the original petition, are, an order of appearance

3 by Moyers and Edmonds as attorneys for the claimant, and an original power of attorney executed on the 17th of March 1886 by the said John M. Nace to the said George B. Edmonds, filed in the Court of Claims on the 12th of March 1891 with an endorsement of Moyers and Edmonds attorneys.

There is also filed a contract of the claimant with Edmonds for the fee. I find this to be a partnership claim.

Claim of Solomon Beery.

The original petition in this claim was prepared by the said George B. Edmonds and is produced from the records of the Court of Claims. Also the original power of attorney from the claimant to Edmonds executed on the 13th of February 1886, irrevocable in its character

and containing full authority to prosecute the claim. This document was filed in the Court of Claims on the 20th of May 1888. On the same day there was filed in the said Court an order of appearance by Moyers and Edmonds as attorneys for the claimant. This claim was allowed by the Court and paid. The contract between the claimant and Edmonds for fee is also filed. I find this to be a partnership claim.

Claim of John Young.

The original petition to Congress for the reference of this case to the Court of Claims, was prepared by Edmonds, signed by the claimant and presented to Congress in July 1886.

4 A power of attorney to Edmonds in the usual form irrevocable and with power of substitution, dated May 8, 1886 and an order of appearance of Moyers and Edmonds as attorneys for the claimant, were filed in the Court of Claims on the 12th of May 1888.

There is also filed the contract with Edmonds for fee.

I find this to be a partnership claim.

Claim of R. H. Rue, Administrator of Edward A. Alston.

In the matter of this claim the original petition to Congress is shown to have been prepared by the said George B. Edmonds and was presented to Congress in 1886. An original contract between the claimant and Edmonds providing among other things for the fee to be allowed the latter, was also produced in proof. The claim was transferred to the Court of Claims under the Act of Congress before referred to and there allowed.

I find this to be a partnership claim.

Claim of the Executors of Thomas Kidd.

On the 15th of May 1886, Mrs. M. D. King and C. L. Kidd son and daughter of Thomas Kidd and executors of his will, executed and delivered to Edmonds their power of attorney, irrevocable and with power of substitution, authorizing him to prosecute this claim.

Edmonds thereupon prepared the original petition for a

5 reference to the Court of Claims and presented it to Congress on June 12, 1886.

The claim was referred to the Court and on April 13, 1888 a notice of the appearance of Moyers and Edmonds as attorneys for the claimant was filed in the case.

The three papers here described are part of the records of the Court.

When this claim was ready for payment, one W. A. Montgomery of Edwards, Mississippi, claimed to be entitled to a fee of fifteen per cent. upon the amount allowed, under an agreement with the defendant Moyers and after considerable controversy and negotiation between the receivers, Montgomery and the Treasury Department, Moyers consenting to Montgomery's demand, a sum equal to fifteen

per cent. of the amount appropriated for the claim was paid to Montgomery by the Receivers. The complainant reserved the right to object to its allowance from the partnership fund. As this condition therefore materially affects the method of distribution evidence was taken by me which developes the following facts:

Moyers undertook to transfer the conduct of this claim to his daughter Miss Ida Moyers and in correspondence with the Receivers states that she is entitled to the fee. Miss Moyers in her evidence here testifies to the same effect; she also testifies that the defendant Moyers employed Montgomery as local counsel in the prosecution of claims under a general agreement that the latter should receive a fee of ten per cent. of the amount recovered, and that he had attended to the taking of the testimony in this case.

6 About November 1900 after Montgomery had rendered all of his services in the matter, Miss Moyers prepared a contract of employment of Gilbert Moyers as attorney to prosecute this claim with an agreement to allow him a fee of fifty per cent. of the amount which might be collected thereon, and sent it to Montgomery to procure the signatures of Susan Kidd and Mary C. King who were described in the paper as the sole heirs of Thomas Kidd, deceased. When the document was returned by Montgomery it bore the signatures of these two persons and an interlined addition to the effect that 35% of the fee was to go to Moyers and 15% to Montgomery. This paper was produced by Miss Moyers in giving evidence here and is returned as an exhibit with this report.

In explanation of this proceeding Miss Moyers states that she was unable to find among her father's papers any fee agreement with the claimants and that she was not informed of Mr. Edmonds' appearance in the case in the Court of Claims.

Counsel for the defendant Moyers contend that under existing conditions the assistance of local counsel was necessary, that the services rendered by Montgomery were valuable and that a fee of fifteen per cent. of the amount recovered was reasonable.

This contention does not seem to rest on the agreement of November 20, 1900, but upon the necessity for and the right of Moyers as surviving partner to make the employment of Montgomery; the performance of the service and its reasonable value.

7 Counsel for the complainant cites the provision of the partnership agreement that Moyers should advance all expenses incident to the prosecution of the claim which expense should not exceed two and one half per cent. of the amount allowed upon the claim and contends that this included the services of local attorney.

In most of the claims included in my report filed in this case on the 20th of August 1902, the practice of the defendant in the employment of local attorneys was to measure their compensation by the time of service, generally a per diem allowance. In many instances he personally performed the service making claim for his travelling expenses only.

All of the testimony for these claimants had been taken and filed on or before 24th of August 1898, more than two years prior to the

agreement purporting to allow Montgomery a fee of fifteen per cent. There was then no further occasion for his employment or service.

Assuming that he had attended to the taking of all this testimony the extent of his service is indicated by the fact that the volume of the depositions aggregates only 271 typewritten folios or 26 printed pages.

The simple statement of these conditions is a sufficient answer to the averment that the service rendered was reasonably worth fifteen per cent. of the allowed claim.

There is another feature of the case which may be noticed here. One George M. Barber also a resident of Mississippi has filed a petition setting forth that under a written employment by
8 Moyers he hunted up witnesses, obtained the testimony and forwarded it to Washington, for which service he was to receive ten per cent. of the fee in the case.

No proof has been submitted in support of this claim and by agreement the amount of the demand is to be reserved to await further proceedings.

The defendant Moyers seems in the Kidd claim to have entrusted to other attorneys the taking of proof and to Miss Moyers the general control of the prosecution outside of the Court room. Both he and Miss Moyers support the demand of Montgomery and assented to its payment. The complainant assented to its payment under the conditions set forth in the testimony of Mr. Tucker, reserving the right to insist that he should be charged exclusively upon the share of Moyers in the fee.

Under the conditions established in proof I am of the opinion that the amount paid to Montgomery should be so charged.

Claim of Isaiah B. Beans.

On the 27th of May 1886 Edmonds as attorney for the claimant, filed in the Court of Claims a suggestion of the death of the claimant and a request for extension of time to file a petition.

This was followed by a second request for time, signed by Edmonds.

On the 23rd of September 1886 Nancy H. Beans and Re-
9 becca H. Beans as executors of the will of the original claimant gave to Edmonds their power of attorney (irrevocable and with power of substitution) authorizing him to prosecute the claim. This power of attorney was filed in the Court of Claims on September 24th 1886.

On the next day Edmonds filed in the Court of Claims the petition of the executrices fully setting forth the claim and its history. This paper was signed by him as attorney.

Edmonds also filed on the 29th of October as attorney for the petitioners a brief upon the question of loyalty of the original claimant.

In this case one O. I. Thomas asserted a right to one half of the fee under an agreement with Moyers dated December 4th 1895 stipulating that the fee should be equally divided between them, and an

agreement by the claimants dated December 7th 1895 reciting an employment of Moyers and Thomas to prosecute the claim and agreeing to allow them fifty per cent. of the recovery.

In view of Edmonds' connection with this claim shown by the records of the Court of Claims and necessarily known to Moyers, the making of these agreements should not be allowed to prejudice the rights of Edmonds or his estate in the premises. If Moyers chose to employ Thomas to perform the work of a local attorney in the case (which seems to have consisted in taking three printed pages of testimony) and to pay him one half of the fee for that service I do not think Edmonds' share of the compensation should be diminished thereby.

10 Counsel for the defendant contending that the sum paid to Thomas should be charged against the interest of Edmonds and his estate, as well as against that of the defendant, base that contention upon the ground that the service of a local attorney was necessary and that the services rendered were reasonably worth one half of the fee.

It does not clearly appear that the service was necessary and it does appear from the extent of the service rendered as shown by the record, that the amount specified was largely in excess of its reasonable value.

Upon the proof I find that the share of the complainant in the fee in this claim is not chargeable with any part of the sum paid to O. I. Thomas.

Claim of John W. Fletcher.

The original petition to Congress for a reference of this case to the Court of Claims was prepared by Edmonds who had a contract with the claimant for the fee to be received.

The relation with Edmonds to the claim is further shown by correspondence with the claimant as early as March 1886 filed as exhibits here.

I find this to be a partnership claim.

The defendant Moyers in his answer and testimony in this proceeding repeatedly asserts entire ignorance of Edmonds appearance or action in these cases although asserting with equal em-

11 phasis a thorough familiarity with all the records and proceedings. In view of the evidence of what these records contain it is more than difficult to reconcile the two assertions with each other.

Be that as it may, it is sufficient for the purposes of this report that the relation of Edmonds to these claims as attorney of record and under agreement with the claimants is fully established by proof which also shows that they were among the claims set forth in what is known as the partnership agreement.

Upon the views herein expressed I have stated in the Schedule herewith a distribution of the fees collected by the Receivers as shown by the report filed on May 20th 1903.

Taking up the balance in that account I add the fee in the

Fletcher claim and deduct the costs of the reference and the sum to be retained to await the result of the claim of Barber in the Kidd case.

To create a basis of distribution I add the sum paid to Montgomery and Thomas and divide the aggregate into two equal portions.

From the share of the complainant I deduct one half of expenses paid by Moyers which is allowed by consent although in excess of the limit of the partnership agreement.

The sum so deducted I add to the share of the defendant and deduct the amount paid to Montgomery and Thomas.

The account as thus stated shows the disposition of the actual fund in the hands of the Receivers.

JAS. G. PAYNE, *Auditor.*

12 SCHEDULE A.

Summary of Receiver's Account.

DR.

To Amount of fees collected as per account of Auditor, filed May 20, 1903		9,681.68
Amount of fee received in claim of John W. Fletcher.		231.00
		9,912.68

CR.

By Expenditures as per account filed May 20, 1903, including amount paid to W. A. Montgomery in the claim of the executrices of Thomas Kidd (2019) and to O. I. Thomas in the claim of Isaiah Beans	2,490.60		
Commissions to Receivers per said account	968.16		
On fee in claim of John W. Fletcher	23.10		
		991.26	
			3,481.86
Balance to Schedule B			$6,430.82

13 *Account of Fees Collected by the Receivers in Partnership Claim.*

Claim of Ernest Neill, Administrator of Joseph Egner:		
Amount of fee collected		816.00
Expenses paid by Moyers	30.25	
Ditto by Receivers	12.00	

Claim of William Goddard:		
Amount of fee collected		120.50
Expenses paid by Moyers	24.97	
Ditto by Receivers	20.00	
Claim of Edward S. Nace, administrator of John M. Nace:		
Amount of fee collected		88.33
Expenses paid by Moyers	15.32	
Ditto by Receivers	22.25	
Claim of C. L. Kidd, and Mary C. King, executors of Thomas Kidd:		
Amount of fee		6,730.00
Expenses paid by Moyers	149.72	
Ditto by Receivers	31.00	
W. A. Montgomery	2,019.00	

14

Claim of Solomon Beery:		
Amount of fee collected		49.85
Expenses paid by Moyers	23.47	
Claim of John Young:		
Amount of fee collected		1,074.50
Expenses paid by Moyers	40.64	
Ditto by Receivers	25.00	
Claim of Nancy H. Beans and Rebecca H. Beans, Executrices of Isaiah H. Beans:		
Amount of fee collected		640.00
Expenses paid by Moyers	34.32	
Paid by Receivers	4.00	
O. I. Thomas	320.00	
Claim of R. H. Rue, Administrator of Edward A. Alston:		
Amount of fee collected		162.50
Expenses paid by Moyers	16.37	
Ditto by Receivers	10.75	
John W. Fletcher:		
Amount of fee collected		231.00
Expenses paid by Moyers	23.67	

15

SCHEDULE B.

Distribution.

Balance from Schedule A		6,430.82
Auditors fees and testimony per account filed May 20th, 1903	102.00	
Additional	50.00	
	152.00	
To be reserved for determination of the claim of George M. Barber in case of Thomas Kidd	682.00	
		834.00
Balance of fund		5,596.82

Add amount paid to W. A. Montgomery in claim of Thomas Kidd to be charged to the share of the defendant	2,019.00
And amount paid to O. I. Thomas in claim of Isaiah Beans to be charged to the share of the defendant	320.00
Basis of division	$7,935.82

16 SCHEDULE B.

Distribution Continued.

$7,935.82

To Horace S. Cummings, administrator of George B. Edmonds:		
One-half	3,967.91	
Less one-half of expenses paid by Moyers	179.36	
		3,788.55
Estate of Gilbert Moyers:		
One-half	3,867.91	
Add from above share	179.36	
	4,147.27	
Deduct amount paid W. A. Montgomery	2,019.00	
And O. I. Thomas	320.00	
	2,339.00	
		1,808.27
		$5,596.82

JAS. G. PAYNE, *Auditor.*

17 CUMMINGS
vs.
MOYERS.

WEDNESDAY, *November* 5, 1902.

Hearing pursuant to notice.

Present: Mr. Tucker and Mr. Butterfield for the complainant.

At the request of the counsel for the defendant the hearing is continued to Monday, November 17, 1902 at 10:30 A. M.

MONDAY, *November* 17, 1902.

Hearing pursuant to adjournment and notice.

Present: Mr. Tucker for the complainant and Mr. Birney for the defendant.

The counsel for the defendant states that Mr. Moyer has not returned to the city but is, he is informed, on his way here and requests an adjournment to some future day in the present week.

The reference is thereupon adjourned to Friday, November 21, 1902, at 10 A. M.

FRIDAY, *November* 21, 1902.

Hearing pursuant to adjournment.

Present: Mr. Tucker for the complainant and Mr. Carter for the defendant.

At the request of the counsel for the defendant the reference was continued to Monday, December 1st, 1902, at 10:30 A. M.

18 CUMMINGS
vs.
MOYER.

DECEMBER 1, 1902—10:30 a. m.

Hearing pursuant to adjournment.

Present: Mr. Tucker for the complainant and Mr. Carter for the defendant.

Counsel for the defendant states that the records and documents called for in the motion presented by counsel for the complainant are in readiness to be produced and will be filed with the Auditor during the early part of the present day for the inspection of counsel.

Thereupon the reference is continued to Wednesday, December 3, at 10-30 A. M.

2:30 P. M.

Counsel for the defendant filed the records and documents above referred to.

CUMMINGS
vs.
MOYER.

WEDNESDAY, *December* 3, 1902—10:30 a. m.

Hearing pursuant to adjournment.

Present: Mr. Tucker for the complainant and Mr. Carter for the defendant.

Pursuant to notice to produce certain papers given heretofore by the complainant to the defendant, the defendant has produced the Court of Claims papers and files in the following cases pending in that Court.

Ernest Neill, administrator of Joseph H. Egner, deceased, Congressional No. 9334.

19 William Goddard, Congressional No. 8951.

Edward S. Nace administrator of John M. Nace, Congressional No. 6443.

C. L. Kidd and Mary O. King executrix of Thomas Kidd, Congressional No. 3350.

Hugh Murdock, Congressional No. 6883.

Solomon Beery, Congressional No. 9456.

John W. Fletcher, Congressional No. 4461.

John Young, Congressional No. 4224.

Nancy H. and Rebecca H. Beans, executrix of Isaiah B. Beans, Congressional No. 702.

Robert H. Rue, administrator of Edward H. Alston, Congressional No. 1139.

Mr. CUMMINGS, having been duly sworn, testified as follows:

By Mr. TUCKER:

Q. Mr. Cummings, I hand you ten jackets each containing certain papers and each jacket containing certain endorsements relating to the above claims and ask you what, if anything you know of those jackets and their contents? A. The jackets in this case were among the papers of George B. Edmunds who was under my guardianship, he having been decided by the Court to be insane, these were among the papers that I found, and every one of these jackets are endorsed in the handwriting of George B. Edmunds, and are in the same condition they were in when found by me.

20 Q. I hand you a paper that I have just taken from the Court of Claims records and papers in the case of Ernest Neill, administrator of Joseph H. Egner and ask you to examine the written portion of said petition and state if you know in whose handwriting such written portion of said petition is? A. The written portion of this petition is in the handwriting of George B. Edmunds, excepting the signature.

Mr. TUCKER: I offer that petition in evidence, marked Exhibit 1.

Mr. CARTER: I note an exception on behalf of the defendant as the papers are incompetent and irrelevant to this case and because the execution of the same is not proven.

The AUDITOR: The objection is overruled.

It is stipulated by counsel that where papers from the files of the Court of Claims are offered in evidence by either party, copies shall be made and made a part of the record in lieu of such original papers which are to be returned to the Court of Claims files.

Mr. TUCKER: I now offer in evidence the contents of the jacket produced from Mr. Edmunds' effects in the case of Joseph H. Egner, particularly a letter to Mr. Edmunds from Medicine Lodge, Kansas, dated May 15, 1886, from W. H. Gillam, purporting to be the same person signing the petition filed in the Court of Claims, just offered in evidence.

Mr. CARTER: I object on behalf of the defendant as to all
21 and each of the said papers on the ground that the papers are incompetent and irrelevant and because the execution of the same is not proven, because it does not appear as in any of these papers that the defendant was ever informed of the existence or contents of the same, and because some of these papers purport to have been ex-cuted after the formation of the partnership in question between Edmunds and Moyer.

The AUDITOR: The objection is overruled.

Mr. TUCKER:

Q. Mr. Cummings, I hand you a petition taken from the files of the Court of Claims in the case of William Goddard, Congressional No. 8951 to the Senate and House of Representatives to refer the claim to the Court of Claims and ask you to examine the written portion of such petition other than the signature of the petitioner and to state in whose handwriting if you know, such written portion is:

A. The handwriting with the exception of the signature is that of George B. Edmunds.

Mr. TUCKER: I offer in evidence that petition together with the endorsements on the back thereof, marked Exhibit 2. The Counsel for the defendant objects on the same ground offered to the introduction of the paper offered in evidence in the Neill case.

The AUDITOR: The objection is overruled.

Mr. TUCKER: I now offer in evidence the contents of Edmunds jackets in the William Goddard claim particularly a paper
22 purporting to be a contract between Goddard and Edmunds for fees.

Mr. CARTER: I object on behalf of the defendant on the same grounds assigned for my objection to papers from jacket of Edmunds offered in evidence in the Neill case.

The AUDITOR: The objection is overruled.

Mr. CARTER: It is stipulated that to any papers hereafter to be offered in evidence on the part of the complainant, coming from the files of the Court of Claims or from the jackets of George B. Edmunds these objections above noted on the part of the defendant shall respectively apply.

Mr. TUCKER:

Q. I hand you a petition taken from the Court of Claims files in the case of Edward S. Nace administrator of John M. Nace, Congressional No. 6843, and ask you to examine the written portion of such petition other than the signature and to state in whose handwriting such written portion is. A. The written portion of this petition to Congress with the exception of the signature is in the handwriting of George B. Edmunds.

Mr. TUCKER: I offer this petition and the endorsements thereon in evidence, marked exhibit 3. I also offer in evidence papers taken from the files of the Court of Claims in the last mentioned case, being an entry of appearance of Moyer and Edmunds as attorneys for the claimant in such case, and also a power of attorney taken from the files of the Court of Claims in such case of the claim-
23 ant John M. Nace to George B. Edmunds, dated March 17, 1886, together with the endorsements thereon, marked exhibits 4 and 5. I also offer in evidence the contents of the Edmunds jackets in the Nace claim particularly the fee contract between the claimant, John M. Nace and George B. Edmunds, dated March 17, 1886.

Q. I hand you a petition taken from the Court of Claims files in the case of C. L. Kidd and Mary O. King executrix of Thomas Kidd, Congressional No. 3360 to the Senate and House of Representatives for a further claim to the Court of Claims and ask you to examine the written portion of such petition and state in whose handwriting such writing is? A. The handwriting of this paper except the signature is that of George B. Edmunds.

Mr. TUCKER: I offer this paper and the endorsements thereon in evidence, marked exhibit No. 6. I also offer in evidence the power of attorney taken from the files of the Court of Claims in the Kidd

case, being a power of attorney from C. L. Kidd and Mrs. King executrix of Thomas Kidd to George B. Edmunds dated May 15, 1886 and filed in the Court of Claims April 13, 1888, marked exhibit 7. I also offer in evidence a paper taken from the files of the Court of Claims in such case stamped filed April 13, 1888, being the appearance of Gilbert Moyers and George B. Edmunds as attorneys for the claimant in such case, marked exhibit 8.

Mr. CARTER: I object on behalf of the defendant on the
24 same ground heretofore assigned for my objection to the other Court of Claims papers offered in evidence by the complainant and on further ground that the paper is not acknowledged as required by the rules of the Court of Claims regarding powers of attorney, this execution has not been in any way proved. It is stipulated that this objection shall also apply to all powers of attorney offered in evidence from files of the Court of Claims.

The AUDITOR: The objection is overruled.

Mr. TUCKER: I also offer in evidence the contents of the Edmunds jackets in the Kidd claim, particularly the fee contract between the executors of Thomas Kidd and George B. Edmunds, dated May 15, 1886.

Q. I hand you a petition taken from the files of the Court of Claims in the case of Hugh Murdock, Congressional No. 6883 to the Senate and House of Representatives to refer the claim to the Court of Claims and ask you to examine the written portion of said petition other than the signature and state in whose handwriting such written portion is? A. In the handwriting of George B. Edmunds.

Mr. TUCKER: I offer this petition together with the endorsements thereon in evidence, marked exhibit 9. I also offer in evidence a paper taken from the files of the Court of Claims in this case, stamped, filed March 12, 1889, being the appearance of Moyers and Edmunds as attorneys for the claimant, marked exhibit 10.

Q. I hand you a petition taken from the files of the Court of Claims in the case of Solomon Beery, Congressional No.
25 9456 to the Senate and House of Representatives to refer the case to the Court of Claims and ask you to examine the written portion of such petition other than the signature and state in whose handwriting such written portion is? A. In the handwriting of George B. Edmunds.

Mr. TUCKER: I offer this petition in evidence together with the endorsements thereon, marked exhibit 11. I also offer in evidence power of attorney taken from the files of the Court of Claims in this case, stamped filed May 28, 1888, being the power of attorney from the claimants to George B. Edmunds, dated February 13, 1886, and marked exhibit 12. I also offer in evidence a paper taken from the files of the Court of Claims in this case stamped filed May 28, 1888, being the appearance of Moyers and Edmunds as attorneys for the claimant, and marked exhibit 13. I also offer in evidence the contents of Edmunds' jacket in the Beery case, particularly the fee contract between the claimant and Mr. Edmunds, dated February 13, 1886.

Q. I hand you, Mr. Cummings, a fragmentary paper taken from

the files of the Court of Claims in the case of John W. Fletcher congressional number 4461, being part of a petition to the Senate and House of Representatives to refer the case to the Court of Claims and ask you to examine the written portion of the said petition other than the signature and state in whose handwriting such written portion is? A. In the handwriting of George B. Edmunds.

26 Mr. TUCKER: I offer the petition together with the endorsements thereon in evidence marked exhibit 14. I also offer in evidence the contents of the Edmunds jacket in the Fletcher case particularly the fee contract between the claimant and Mr. Edmunds, undated, and two letters from Fletcher to Edmunds, dated respectively March 6 and March 18, 1886.

Q. I hand you a petition taken from the files of the Court of Claims in the case of John Young, Congressional No. 4224 to the Senate and House of Representatives to refer the case to the Court of Claims and ask you to examine the written portion of such petition other than the signature and state in whose handwriting such written portion is? A. In the handwriting of George B. Edmunds.

Mr. TUCKER: I offer this petition with the endorsements thereon in evidence, marked exhibit 15. I also offer in evidence the power of attorney taken from the files of the Court of Claims in this case from the claimant to Mr. Edmunds dated May 8, 1886 and stamped filed May 12, 1886, and marked exhibit 16. I also offer in evidence a paper taken from the files of the Court of Claims in this case stamped filed May 12, 1888, being the appearance of Moyer and Edmunds as attorney for the claimant, and marked exhibit 17. I also offer in evidence the contents of the Edmunds jacket in the case of John Young, particularly the fee contract between the claimant and Mr. Edmunds, dated May 8, 1886. I offer in evidence

27 the following papers taken from the files of the Court of Claims in the case of Nancy H. and Rebecca H. Beans, executrix of Isaiah B. Beans, Congressional Number 702, namely the power of attorney filed September 24, 1886 of the executrix to George B. Edmunds dated September 23, 1886, and marked exhibit 18. I offer the suggestion of death of the claimant and request that time for filing the petition be extended, and signed by George B. Edmunds as attorney for claimant and stamped filed May 27, 1886, and marked exhibit 19; A request for extension of time for filing the petition made by George B. Edmunds as attorney for claimant and stamped filed September 24, 1886, and marked exhibit 20; A petition of the claimant's filed September 25, 1886 by George B. Edmunds, their attorney, and marked exhibit 21; and a brief on loyalty filed by George B. Edmunds as attorney for the claimant, October 29, 1886, marked exhibit 22. I also offer in evidence the contents of the Edmunds jacket in the Beans cases particularly the fee contract between the claimant and Edmunds, dated February 22, 1886.

Q. I show you a petition from the files of the Court of Claims in the case of R. H. Rue, administrator of Edward H. Alston, Congressional No. 1139 to the Senate and House of Representatives

to refer the claim to the Court of Claims, and ask you to examine the written portion, of the *such* petition other than the signature and state in whose handwriting such written portion is? A. In the handwriting of George B. Edmunds.

28 Mr. TUCKER: I offer this petition together with the endorsements thereon in evidence, marked exhibit 23. I also offer in evidence the contents of the Edmunds jacket in the case of E. H. Alston particularly the fee contract between Mrs. Mary Alston widow of Edward A. Alston deceased, and George B. Edmunds, dated April 19, 1886.

Mr. CARTER: That as to each of the papers offered in evidence in the examination of this witness from the Court of Claims files of which the date of the execution of the paper or the date of its filing in the Court of Claims is subsequent to the formation of the partnership between Edmunds and Moyers objection is made on the part of the defendant on the ground that by reason of such fact the paper is irrelevant to the issue here and inadmissible.

The AUDITOR: The objection is overruled.

Cross-examination.

By Mr. CARTER:

Q. Mr. Cummings, as I recall, either you or Mr. Butterfield has testified in this case already that George B. Edmunds had no brothers or sisters except the brother who was one time Commissioner of the District of Columbia referred to as Judge Edmunds, do you know whether or not Judge Edmunds had any children?

Mr. TUCKER: I object as irrelevant and immaterial to the issues raised by this reference and also as beyond the scope of the direct examination.

29 The AUDITOR: The objection is sustained, on both grounds.

Q. Do you know whether there are now living any heirs of George B. Edmunds?

Mr. TUCKER: I object on the same grounds.

The AUDITOR: The objection is sustained.

Q. I should like you to state again Mr. Cumming, where and when Mr. Edmunds died? A. Where he died?

Q. Yes. A. He died—well the nearest postoffice is Dun Loring, Fairfax County, Virginia.

Q. Died in Fairfax County, Virginia, did he? A. In Fairfax County.

Q. When did he die? A. I think the very last of October or the very first of November, 1896.

Q. Have you ever shown to Colonel Moyers or caused to be shown to him any of these papers of Edmunds in these jackets that have been offered here to-day in evidence? A. I never showed them to him.

Mr. TUCKER: Attention is here directed to the fact that these jackets together with three or four hundred other jackets were

offered in evidence by the complainant in the first hearing before the Auditor under the first reference and have been accessible to the defendant ever since.

30 Mr. CARTER:

Q. Has he ever seen them so far as you know? A. Not that I know of.

Q. So far as you know has he ever seen any of these papers that you have produced, either involved in the present reference or those in the former? A. As far as I know he has never seen any, except as George B. Edmunds showed them to him.

Q. Have you any knowledge of Edmunds showing them to him? A. Only what Mr. Edmunds has told me.

Mr. CARTER: Of course I don't ask you anything Mr. Edmunds has told you.

Hearing adjourned to Saturday, at 10 o'clock A. M.

MONDAY, *December* 8, 1902.

Hearing pursuant to adjournment.

Present: Mr. Tucker and Mr. Carter.

Mr. TUCKER having been sworn testified as follows:

Upon the passage of the orders of the Court dated the 24th of May, 1902, and the 6th of June 1902, Mr. Henry F. Woodard and myself as receivers in this cause through the law firm of Davis and Tucker took up with the Assistant Secretary of the Treasury Department, Mr. Ailes, the question of the propriety of the Treasury Department delivering to the receivers treasury warrants in settlement of the ten claims mentioned in those orders. After several

31 hearings before Mr. Ailes and other officials of the Department it was decided by them to recognize the orders of the Court and to deliver the warrants to the receivers, the warrants however, to be payable to the claimants or their legal representatives. In almost all of these cases the original claimants were dead and the Treasury Department required the receivers in those cases to strictly comply with the terms of the Act of Congress of May 27, 1902, appropriating money to pay this class of claims. That Act provided that in the case of the death of any claimant or the death or discharge of any executor or administrator of any claimant then payment of the claim should be made to the legal representative, provided that where the claimant was dead the administrator, executor or legal representative should file a certified copy of his bond, which bond should be at least equal in amount to the sum appropriated, and also that where under the Act payment was to be made to the executor or administrator and he was dead, or no longer held office the payment should be made to his successor, the title of the latter to hold office being established to the satisfaction of the Treasury Department.

This ruling on the part of the Treasury Department necessitated the receivers through Messrs. Davis and Tucker who acted as their attorneys, employing local counsel in the various places of residence

of the ten claimants or their representatives. Messrs. Davis &
Tucker had very considerable correspondence with the at-
32 torneys so employed, the claimants themselves or their legal
representatives and in all wrote between seventy-five and one hundred letters in their efforts to collect the treasury warrants. The receivers were compelled to incur certain obligations to the attorneys so employed and to make various payments for services, certified copies of deeds etc. Following is a detailed report of the collections and disbursements in each case taking them up in the order in which they are set forth in the orders of the Court of May 28, and June 6, 1902.

1. Ernest Neill, administrator of Joseph Enger of Batesville, Arkansas, amount appropriated $1,632.00. In this case we employed the firm of Yancy, Reeder and Casey of Batesville as our correspondents, a copy of which bill for services is attached to this report. The Treasury Department delivered to us a draft for the full amount, $1,632.00 appropriated, and we as receivers after considerable correspondence procured from Mr. Neill, the administrator, a power of attorney to the National Safe Deposit Savings and Trust Company of this city giving that company authority to endorse the warrant and with instructions to distribute one-half thereof to the receivers as representing the attorneys for the claimant and one-half to the claimant. The fee contract between Edmunds and the claimant was for a fee of one-half. The charge of our correspondents in Batesville for services was $11. The charge of the Clerk of the Probate Court for a certified copy of the administrator's bond was
$1.00. There were also some expenditures for telegrams
33 which will be included in the general account of the receivers for telegraphic service.

Mr. CARTER: In view of the fact that the deposition now being taken is in effect a report of the receivers, it is stipulated that any and all parts of the same shall be subject to any objections to be made hereafter regarding the competeney and relevancy of the testimony or its legality on other grounds, and that such objections need not here be specifically made.

Mr. TUCKER:

2. William Goddard of De Kalb County, Georgia; appropriation was $241 and the receivers received a warrant of the Treasury for that amount, payable to J. Howell Green of Atlanta, Georgia, guardian of the claimant, William Goddard, the latter being an imbecile. In this case we employed Mr. Burton Smith, an attorney of Atlanta, to act for us, and he also acted for us in the case of Edward S. Nace to be hereinafter mentioned. Mr. Smith charged for services in both of these cases $—; attached hereto are copies of our correspondence with Mr. Smith and with the guardian of the claimant. The fee contract with Edmunds having been for one-half of the proceeds of the claim, the receivers procured from Mr. Green a power of attorney to endorse the warant and distributed to him one-half of the proceeds thereof and retained the other half.

3. Edward S. Nace, administrator of John M. Nace of Fulton

County, Georgia, the amont appropriated was $265 for which
34 sum the receivers received a treasury warrant. The contract between Edmunds and the claimant in this case was for a fee of one-third. The receivers took the matter up with Colonel Moyer's counsel, Mr. Birney and Colonel Moyers stated that he had a contract for a fee of fifty per cent. but that such contract had been mislaid, as will be seen by the attached letter of C. N. Wilson, employed in Colonel Moyer's office. Thereafter how-ver, under date of September 30, 1902, Mr. Birney sent to us a letter signed by Colonel Moyers, which is attached hereto, stating that inasmuch as fee agreement which he had was lost or mislaid the case could be settled for one-third of the warrant. The case was so settled and the receivers have collected one-third of the proceeds of the warrant and hold the same. The charge of Mr. Smith for services in this matter was $20 as appears from his enclosed bill. The charge of the Ordinary for certified copies of letters dismissory, etc. of the administrator was $2.25 which bill is attached hereto is the original correspondence between the receivers, Mr. Smith and the claimant.

4. C. L. Kidd and Mary O. King, executors of Thomas Kidd of Edwards, Mississippi. The appropriation in this case was $13,460. The contract between Edmunds and the claimant was for a fee of fifty per cent. The receivers employed Messrs. Watkins and Easterling of Jackson, Mississippi to act for them, in procuring the necessary power of attorney to endorse the warrant. In this case one W. A. Montgomery, an attorney of Edwards, Mississippi,
35 claimed to be entitled to a portion of the fee and made an effort to collect the entire fee from the Treasury Department obtaining from the claimant a power of attorney to receive the warrant. The receivers were compelled to institute a suit in the Supreme Court of the District of Columbia in their own names as authorized by the order of the Court of May 28th, 1902, against the executors and Colonel Montgomery. This cause is known as Equity No. —. In the cause Mr. Woodard and myself were appointed receivers to receive the warrant from the Treasury Department. The Department however, in view of the contest with us there pending, declined to deliver the warrant for the whole amount appropriated to the receivers. After several hearings, however, before Colonel Reeves, Assistant Solicitor of the Treasury Department, the Department directed that two warrants be issued, one for one-half of the amount appropriated, payable to the executors to be delivered to them in Edwards, Mississippi and the other for the remaining one-half of the amount appropriated to be payable to the executors and to be delivered to the receivers. The receivers thus received a warrant for $6730. Colonel Montgomery claimed that Mr. Moyers had employed him as local counsel in this case and had agreed to pay him for his services fifteen percent of the entire amount appropriated. The receivers after obtaining the draft took the matter up with Mr. Birney, Mr. Moyer's counsel, and with Mr. Cummings, the complainant, and by agreement of the parties, through their counsel, the receivers were directed to recognize the claim of Mr. Mont-
36 gomery. Accordingly there was distributed to him by the receivers thirty per cent. of the proceeds of the draft in the

receivers' hands, $2019. Attached hereto is all of the correspondence had between the receivers and Messrs. Watkins and Easterling of Jackson, Mississippi and Colonel W. A. Montgomery of Edwards, Mississippi, and Mr. Birney the solicitor for Colonel Moyers. Messrs. Watkins and Easterling have made a charge for services against the receivers for $25 and their bill is attached. The receivers expended in paying costs in the Equity suit brought by them the sum of $—. The receivers also obtained from Mr. Moyers a direct authorization to pay Mr. Montgomery the share of the fee claimed by him as set out in his letter of Aug. 6 and August 11, 1902 attached hereto. I also attach a letter from Miss Ida Moyers dated July 24, presumably 1901, in which it is said "Yes, you are right in your statement that the agreement in this case gives you fifteen per cent. of the claim." In this connection it is perhaps proper to state that Mr. Cummings gave his consent to the payment of the share of the fee claimed by Mr. Montgomery without prejudice to his right to contend hereafter that Mr. Moyers was not authorized to make a contract with a local attorney that would bind the partnership of Moyers and Edmunds.

5. Hugh Murdock, Carteret County, North Carolina; amount appropriated $274. This is the only one of the ten claims which has not been collected by the receivers. Mr. Charles L. Abernethy, a lawyer of Beaufort, North Carolina, claims to have represented the heirs of Hugh Murdock who is dead, and to be entitled to a
37 fee of twenty-five percent of the amount of the claim. So far as Mr. Edmunds' effects show, Mr. Abernethy has no claim to a portion of this fee and Mr. Moyer also denies his right to any portion of the fee. The appropriation having been made to the claimant and the claimant being dead, it would be necessary to take out letters of administration on his estate and to employ local counsel in Beaufort, North Carolina to act for the receivers in taking out such administration and the cost would probably equal the amount claimed by Mr. Abernethy. Mr. Abernethy under date of June 23, 1902 as will be seen by his attached letter, offers to take out letters of administration if he shall be paid one-half of the fee of fifty per cent. claimed by the receiver- and Mr. Moyers. The receivers ask to be instructed in the premises. Attached hereto are two letters of Mr. Abernethy dated June 12, 1902 and June 23, 1902.

6. Solomon Beery of Rockingham County, Virginia. The amount appropriated was $100. In this case there was delivered to the receivers a warrant payable to the claimant for the full amount appropriated. The receivers sent this warrant to the First National Bank of Harrisonburg Virginia with directions for Mr. Beery to endorse the same and to pay one-half thereof to the receivers. As shown by the accompanying statement from the Bank, the receivers have received $49.85, the charge of the Bank for collection being fifteen cents. In this case Mr. Beery claims, as appears from his accompanying affidavit dated July 24, 1902, to be entitled to a re-
38 fund out of the attorney's fee of fifty per cent. of $16 expended by him, Mr. Beery, for expenses incurred by him in the taking of depositions, etc. The receivers have agreed with Mr. Beery to submit his claim as made out in such affidavit to the Court,

and if the Court shall decide that he is entitled to the $16, to pay the same to him. In this case the receivers employed Messrs. Conrad and Conrad of Harrisonburg, Virginia to act for them and they ask as appears by their letter of August 12 to be remitted such fee as the receivers think proper under the circumstances.

The receivers have also received the attached bill from Herbert J. Taylor for $20 for professional services rendered in the matter of the prosecution of the Beery claim. The receivers also attached the original of a contract between Beery and one J. Whitson Graham to prosecute the claim. This contract I think was furnished the receivers by Colonel Moyers. They also attach an original contract between Beery and Colonel Moyers employing Colonel Moyers to prosecute the claim. This contract I think was furnished by Colonel Moyers.

7. In the case of John W. Fletcher of Fauquier County, Virginia, the appropriation was $231. The receivers received a warrant from the Treasury Department for that amount and employed Mr. E. S. Turner, Attorney-at-law of Warrenton, Virginia to act for them in the premises. Letters were received from Mr. Turner which are attached hereto. Later Mr. Fletcher himself came to Wash-
39 ington and endorsed the warrant and paid one-half of the proceeds of the same to the receivers retaining the other half. Mr. Turner has not sent a bill for his services as yet. Did little or nothing.

8. In the case of John Young of Yalabusha County, Mississippi, there was an appropriation of $2149 and a treasury warrant for that sum payable to D. R. Wagner, executor of the will of John Young was delivered by the Department to the receivers. The receivers employed Messrs. Kimmons and Kimmons, Attorneys-at-Law of Water Valley, Mississippi to act for them in the premises and I attach letters received from them regarding the case. They have made a charge of $25 for their services. The receivers sent this warrant by express to Water Valley, Mississippi, for collection. The payee endorsed the warrant and one-half of the proceeds of the warrant was remitted in cash by the express company to the receivers. The express charges paid by receivers for this collection were $4.75, $2.70 of which was in payment of express charges on $1074.50 from Water Valley Mississippi to Washington and the balance the express charges on the warrant from Washington to Water Valley. I attach express receipts and receipt of the express agent dated August 2, 1902.

9. In the case of Nancy H. Beans and Rebecca H. Beans, executrices of Isaiah B. Beans of Loudoun County, Virginia, there was an appropriation of $1280 and the receivers received a treasury warrant payable to the claimant for that sum. In this case there was an agreement between Edmunds and the claimant for the payment of a fifty per cent. attorney's fee. Colonel Moyers in making a
40 statement to the receivers concerning a number of these cases, and which is attached, stated that his correspondent in the case was O. I. Thomas of Round Hill, Virginia, and that Mr. Thomas was interested in the fee but to just what extent, he, Colonel

Moyers, was unable to state as he could not find his agreement with him, but his impression was that he was entitled to one-third of the fee, possibly one-half. In Colonel Moyers' letter dated August 6, 1902, to Mr. Birney, and which has been attached to this report in connection with the Kidd case, Mr. Moyers stated that in the Bean case, Mr. O. I. Thomas of Round Hill is entitled to one-half of the fifty per cent. fee. Mr. Cummings, the complainant in this case agreed that the receivers should pay Mr. Turner one-half of the fifty per cent. fee, upon the ground that Colonel Moyers perhaps had the right to bind the partnership by the employment of local counsel but reserves the right to hereafter contend that Colonel Moyers should be charged with the payment of Mr. Turner's share of the fee for the reason that as bet-een Moyers and Edmunds, Moyers had no right to charge Edmunds' share of the fee in the case with payments to local counsel. The receivers employed in the case to assist them Mr. Edwin E. Garrick, Attorney-at-Law of Leesburg, Virginia. Mr. Garrick under the date of July 16, 1902, in a letter attached hereto, encloses a copy of the bond of the executrixes and stated that the fee which he had paid and the tax to the State of Virginia for the certificate amount to $2.00, which sum he had paid, and he enclosed the receipt for the sum from the Clerk of the Loudoun County Court, which receipt is also attached.
41 Mr. Garrick further states that in making the remittance as receivers we could enclose his, Mr. Garrick's expenses for a trip he made to see these old ladies, but failed to state what the expenses of that trip amounted to. In another letter dated June 16, he stated that his expenses were $2.00 which was the amount of his charge. I attach the various correspondence relating to the collection of this claim. The actual amount of money collected by the receivers from the proceeds of the warrant was one-half of the proceeds of warrant. They paid to Mr. Thomas one-half of the fifty per cent. fee and have deposited twenty-five per cent. of the entire proceeds of the warrant to their credit, less $— charges for collection made by the —— National Bank of Leesburg.

10. Robert H. Rue, administrator of Edward H. Alston of South Carolina. There was appropriated $325 and the receivers received from the Department a treasury warrant payable to Mr. Rue for that sum. The receivers employed Mr. Walter Hazard, Attorney-at-law of Georgetown, South Carolina to act for them in the matter. The receivers sent the draft to the Bank of Georgetown with instruction to deliver the same to Mr. Rue upon his payment to the receivers credit of one-half of the amount of the warrant, $162.50 and the Bank remitted that sum to the receivers less fifty cents collection charges, as shown by the detailed statement from the Bank. Mr. Hazard was paid $5.00 for his services on the 3d of July, 1902, and further service being required of him he rendered his bill
42 which is attached hereto on August 4, 1902 for an additional $5.00 for services and a fee of twenty-five cents to the Probate Judge. This bill of $5.25 has not yet been paid. I attach the correspondence in the matter of the claim.

Mr. Tucker advanced to the receivers the sum of $81.60 for various items paid by him as shown in his itemized bill hereto attached, dated August 18, 1902. This bill was paid by the receivers. Several items referred to therein have also been referred to above, in connection with the various cases in which details have been given. The orders of the Court under which the receivers were acting were caused to be printed by the receivers because many copies of the order had to be used in the Treasury Department and in correspondence concerning the claims. The department required the receivers to file copies of each of these orders in their application to the Department for the warrant in accordance with the directions of the Court. The charge for printing was seven dollars.

FRIDAY, *December* 12, 1902.

Hearing pursuant to adjournment.
Present: Mr. Tucker and Mr. Carter.

Mr. CLARENCE CORSON having been duly sworn, testified as follows:

By Mr. TUCKER:

Q. You are the cashier, I believe, of the Columbia National Bank of this City? A. Yes.

Q. And you have been connected with the Bank how
43 long? A. With banking since 1874.

Q. In what capacities? A. All capacities.

Q. Have you ever been at any time receiving teller A. Yes.

Q. How long have you been cashier? A. Ten years.

Q. In the course of your duties as an officer connected with banks have you had occasion to pass upon disputed handwriting? A. Yes.

Q. And can you say what is the extent of your experience in this subject? A. In the paying of checks for a period of from ten to fifteen years.

Q. Have you ever testified as an expert? A. I have.

Q. Roughly speaking how many times? A. Five or six.

Mr. TUCKER: Now Mr. Carter if you want to examine him on his qualifications I suggest that you do so now.

Mr. CARTER: I do not care to.

Q. I hand you exhibit 1 in this reference being a petition taken from the files of the Court of Claims in the Egner case and also the Edmunds jacket in the same case containing certain endorsements and ask you to compare the handwriting of the written portion of the petition other than the signature with the endorsements on the Edmunds jacket and state whether in your opinion they were
44 written by the same or different persons?

Mr. CARTER: In view of some recent and important decisions of the Courts in the matter of expert testimony on handwriting objection is made on the part of the defendant to this question on the ground that it does not appear that the witness knows or is informed

who wrote these papers or that he is in any way familiar with the handwriting of the persons by whom they are supposed to be or purport to have been written.

The AUDITOR: The objection is overruled.

A. In my opinion the handwriting in the body of the petition and on the jacket handed to me were written by the same person.

Q. I hand you exhibit 2, being a petition taken from the files of the Court of Claims in the case of William Goddard and the Edmunds jacket in the same case, containing an endorsement and ask you to make the same comparison and give us your opinion as to the two handwritings.

It is stipulated that the objection above noted on behalf of the defendant regarding the papers in the Egner case is made generally to the papers now offered in the Goddard case and to all similar papers to which the objection may be pertinent and that shall be offered in the other cases embraced in the reference.

A. It is my opinion that the handwriting in the body of the petition and that on the jacket were written by the same person.

45 Q. I hand you exhibit No. 3 being a petition taken from the files in the Court of Claims in the case of John M. Nace and also the Edmunds jacket in the same case containing an endorsement and ask you to make a comparison of the handwriting of the body of the petition other than the signature and the endorsement on the jacket and state your opinion as to whether they were written by the same or different persons? A. It is my opinion that the writing in the body of the petition and on the jacket are written by the same person.

Q. I hand you exhibit No. 6 being a petition taken from the files of the Court of Claims in the Kidd case and the Edmunds jacket in the same case containing an endorsement, and ask you to compare the handwriting in the body of the petition other than the signature and the handwriting of the endorsement and state in your opinion whether they were written by the same or different persons. A. It is my opinion that the writing in the body of the petition and the endorsement on the jacket referred to were written by the same person.

Q. I hand you exhibit No. 9 being a petition taken from the files of the Court of Claims in the case of Hugh Murdock and also the Edmunds jacket in the same case containing an endorsement and ask you to compare the handwriting of the body of the petition other than the signature and the handwriting of the endorsement on the jacket and state in your opinion whether they were written

46 by the same or different persons? A. It is my opinion that the handwriting in the body of the petition and on the jacket referred to are written by the same person.

Q. I hand you exhibit No. 11, being a petition taken from the files of the Court of Claims in the case of Solomon Beery and the Edmunds jacket in the same case containing an endorsement and ask you to compare the handwriting in the petition other than the signature and the endorsement and state in your opinion whether they

were written by the same or different persons. A. It is my opinion that the handwriting in the body of the petition and that on the jacket referred to were written by the same person.

Q. I hand you exhibit No. 14 being a petition from the Court of Claims in the case of John W. Fletcher, also the Edmunds jacket in the same case containing an endorsement and ask you to compare the handwriting in the body of the petition with the handwriting of the endorsement and state whether in your opinion they were written by the same or different persons. A. It is my opinion that the handwriting of the petition and that on the jacket referred to were written by the same persons.

Q. I hand you exhibit No. 15, being a petition taken from the files of the Court of Claims in the case of John Young also the Edmunds jacket in the same case containing an endorsement and ask you to compare the written portion of the petition with the writing of the endorsement and state in your opinion whether they
47 were written *ny* the same person. A. It is my opinion that the writing in the petition and that on the jacket were written by the same person.

Q. I hand you exhibits Nos. 18, 19, 20 and 22, being papers taken from the files of the Court of Claims in the case of the executrices of Isaiah B. Beans and also the Edmunds jackets in the same cases containing endorsements and ask you to compare the handwriting of the exhibits with that of the endorsements on the jackets and state in your opinion whether the handwriting of the exhibits and the handwriting of the endorsements on the jackets were written by the same or different persons. A. It is my opinion that the writing in the exhibits and that on the jackets referred to were written by the same person, except on Nos. 19, and 20 of the exhibits, the word "Allowed" and the initials "W. A. R., C. J."

Q. I hand you exhibit No. 23 being a petition taken from the files of the Court of Claims in the Allston case, and the Edmunds jacket in the same case containing an endorsement and ask you to compare the handwriting of the written portion of the petition other than the signature and the names of witnesses with the handwriting of the endorsements on the jacket and state whether in your opinion the handwriting in the petition referred to would compare with the handwriting of the endorsement as that of the same or different persons.
A. It is my opinion that the written portion, other than the
48 signature and the witnesses, of the petition and the handwriting of the jacket referred to were written by the same person.

Cross-examination.

By Mr. CARTER:

Q. As to the writing submitted to you in each of these cases your conclusion as to identity of the handwriting is made from inspection of the handwriting purely, is it not? A. Yes.

Q. You have no means of knowing as to either of the papers submitted in each of these cases who wrote the matter submitted for your inspection, have you? A. I have not.

Q. You have no familiarity with the handwriting of George B.

Edmunds, decedent of the complainant in this case, have you? A. No sir.

Q. With what Bank are you now connected? A. The Columbia National.

Q. You have been with that Bank, I believe for the past four or five years? A. Yes sir, fifteen.

Redirect.

By Mr. TUCKER:

Q. When you state that you have no familiarity with the handwriting of George B. Edmunds what do you mean? A. Other than what I have seen today that is said to be written by Mr. Edmunds.

49 Q. And other also than what you saw of what was said to be his handwriting in the hearing in the previous reference? A. Yes.

Cross-examination.

By Mr. CARTER:

Q. Did you know George B. Edmunds at all? A. No sir.

Q. So far as you know did you ever see him write? A. I never have.

TUESDAY, *December* 22, 1902.

Hearing pursuant to adjournment.

Present: Mr. Tucker and Mr. Carter.

Continuation of report by Mr. Tucker.

Mr. TUCKER: It was deemed absolutely essential for the receivers to employ counsel in the various localities where the claimants or their representatives resided, as the department was very strict in requiring evidence, of the right of the payee of the warrant to receive the sum appropriated. This proof had to be furnished by the receivers. In my opinion the charges for professional services made by such counsel were quite reasonable, in view of what was required of them, and the amount of correspondence that was had with them.

50 Cross-examination.

By Mr. CARTER:

Q. You are a member of the law firm of Davis and Tucker as well as one of the receivers in this cause, as I understand it? A. Yes.

Q. Your testimony as to the acts of the receivers and the correspondence between them or Davis & Tucker and other persons is from Davis & Tucker's papers and the receiver's both, is it not? A. Partly based on those papers and partly upon my own knowledge of what was done.

Q. I mean that some of the papers from which you are testifying are the receiver's papers and some are Davis & Tucker's papers,

are they not? A. I can only say that almost all of the letters that are attached as exhibits to the receiver's report are directed to the firm of Davis & Tucker as will be seen from examination of the letters themselves. Then too the letters that were written to the claimants or to the correspondents in various places were written by Davis & Tucker as a rule and not by the receivers.

Q. Have you kept separate files of this correspondence and etc. one for the receivers and one for Davis & Tucker? A. Office files?

Q. Yes. A. I have put all papers relating to the receivership in the jacket in our office marked Cummings *vs.* Moyers.

51 Q. Our office, you mean the office of Davis & Tucker? A. Yes.

Q. You testified that in the case of Ernest Neil administrator you employed the firm of Yancy, Reeder and Casey of Batesville, Arkansas to do what was required at that end of the line. The only service required of them was to obtain and forward to the receiver's counsel a certified copy of the bond of Mr. Neil as administrator, was it not? A. That was a part only of the services required of them. In addition they were required to ascertain at the outset whether Moyers had obtained a power of attorney from the claimant to receive the warrant from the Treasury Department, in order that the receivers, if he had obtained such a power of attorney, could take such steps to prevent this being used by Moyers. A telegram of Yancy, Reeder and Casey of June 7, 1902 to Davis & Tucker shows that such a power of attorney had been obtained by Moyers from the administrator about six months previously. These gentlemen also put David & Tucker into direct communication with the administrator as will appear by the later letters to them of June 16. It also appears from their letter of June 24 that they procured a copy of the administration bond and also from their letter of July 15, they procured a certificate of the probate judge making two official documents that they procured for the receivers.

Q. Did the receivers or Davis & Tucker have any correspondence with Mr. Elisha Baxter at Batesville, Arkansas on either of

52 these subjects you mention, that is obtaining the certified copies from the probate judge and ascertaining whether a power of attorney had been issued to Moyers? A. Not that I recall.

Q. Did they attempt to have any such correspondence with him? A. Not that I know of. I don't recall the name at all.

Q. Did they have or attempt to have any correspondence on these subjects with W. H. Gilman, the former administrator of the estate? A. No.

Q. Did you attempt to have any correspondence with Ernest Neil himself directly on these subjects? A. Only after he wrote to us.

Q. That was after Messrs. Yancy, Reeder and Casey at your instance had seen him, was it not? A. Yes.

Q. Did you ever investigate the Court papers or dockets to obtain the address of Mr. Neil? A. I examined the Court of Claims files in that case as well as all of the ten cases in which we collected or attempted to collect the warrants as receivers as will be seen by my affidavits attached to the receiver's reports. If I did obtain

the address of the claimant or their representative, it was with no idea of attempting direct correspondence with them, and this
53 of course was because of their relations or presumes relations with Colonel Moyers. This applies to the Neil case as well as to all the other cases.

Q. Before writing to Messrs. Yancy, Reeder and Casey requesting their services did you make any application or inquiry of Colonel Moyers to know whether he had a copy of the administrators' bond such as was required at the Treasury Department? A. As required by paragraph three of the order of the Court of May 28, 1902, Mr. Woodard and I immediately after the passage of that order called upon Colonel Moyers to furnish to the receivers all powers of attorney and other papers and documents relating to the ten claims in question and which might assist them in collecting the fees and also requested him to furnish them the names and post office addresses of the claimants or if dead, of their legal representatives.

Q. In what way was that call made? A. By letter.

Q. On what date? A. I would have to refer to my letter book which I have not present. I will produce the book at the next session.

Q. In the matter of the claim of William Goddard did the receivers have or attempt to have any correspondence with Mr. Goddard directly before addressing Mr. Burton Smith? A. No, we wrote to none of the claimants or their representatives and had no correspondence with any of them unless we were placed in
54 correspondence by the attorneys to whom we wrote.

Q. In reference to the case of E. S. Nace administrator of John M. Nace, did you have or attempt to have any correspondence with Mr. B. N. Goldsmith at Atlanta for the purpose of obtaining the papers that were required for collection of the appropriation? A. No.

Q. In the Kidd case, did you have or attempt to have any correspondence with Mr. E. Baldwin the local attorney or with Mr. L. A. Marshall also an attorney in the case, living at Vicksburg, Mississippi with a view to obtaining the necessary papers before you entered into correspondence with Messrs. Walker and Esterling? A. No.

Q. Did you have or undertake to have any such correspondence with W. A. Montgomery before writing to Walker and Esterling? A. No.

Q. Did you ever have any direct correspondence with Mr. Montgomery about this case and the payment of his fee in it? A. Yes.

Q. Is that in the file among your exhibits? A. Yes, I suppose it is, there is the file before you.

Q. In the Hugh Murdock case did you have or attempt to have any correspondence with Mr. James R. Daughty local attorney at Newport, North Carolina, before addressing Charles L. Aber-
55 nethy? A. No, not that I recall. I may state that in all of these cases the first step that the receivers took after requesting Colonel Moyers for the papers connected with the case, was to write to the attorneys in the various localities where the claim-

ants resided, the names of these attorneys were taken from Hubbles' Legal Directory, in most cases, in other cases we had personal knowledge of the attorneys.

Q. Did you have or attempt to have any correspondence with C. C. Poole about this case? A. No.

Q. In the Solomon Beery case did you have or attempt to have any correspondence with Mr. George W. Graham at Harper's Ferry, Virginia with a view to getting the necessary papers? A. No.

Q. In the case of John Young did you have or attempt to have any correspondence with H. K. Martin local attorney at Water Valley, Mississippi about the papers? A. No.

Q. In the Beans case, did you have or attempt to have any correspondence with Mr. O. I. Thomas at Round Hill, Virginia, the local attorney in the case? A. We have some correspondence with him and on one occasion he came to Washington and saw me. His address is Blue Mount, not Round Hill, Virginia.

Q. I mean did you address him before writing to Mr. Garrett the lawyer you employed at Leesburg? A. No.

56 Q. I find in the correspondence that you have filed as exhibits in these instances, a letter from Mr. Thomas dated July 1902, to Davis & Tucker, in reference to the bond to be executed by the claimants; also a letter dated August 20, 1902, reciting that this bond is enclosed with the letter; also three letters dated August 23, August 28, and August 30, 1902, respectively, in reference to fees to be paid to the attorneys, I suppose you have copies of your letters to which these are replies? A. Yes, I will produce my letter press book containing copies of the letters wanted at the next session.

Q. In the Allston case did you have or undertake to have any correspondence with Mr. L. G. Walker at Georgetown, South Carolina? A. No.

Q. Where I have spoken in the foregoing questions of correspondence which "you" have had or attempted to have I mean the question to cover the correspondence both of the receivers and the firm of Davis & Tucker, you have answered the questions on this understanding and construction, have you not? A. Yes.

Q. Except as testified to already by you the receivers had no difference or difficulty with the claimants or with local attorneys or other persons claiming interest in these fees about the collection and distribution of the fees did you? A. We had considerable difficulty. Whether I have testified about all of the difficulties

57 that we experienced in collecting these claims I cannot now recall.

Q. Can you now recall a single case in which you had any controversy about these fees or any controversy or difficulty in obtaining the various copies of court papers except as may be shown in your foregoing testimony? A. I do not think there was a single instance in which the claimant was dead that we did not have difficulty and some times great difficulty in satisfying the Treasury Department officials in the matter of evidence showing who should

be named as payee in the warrants. So far as I now recall there were only three instances in which the original claimants were living, that of Solomon Beery, that of John W. Fletcher and that of William Goddard. Goddard was an imbecile, J. Howell Green of Atlanta, Georgia being his guardian. Much difficulty was experienced in this claim. In the case of the Beery claim there was very considerable correspondence especially with reference to a claim by Beery that he was entitled to a sum of money advanced by him in the taking of testimony. We had little trouble in the Fletcher case, as Mr. Fletcher a very old man accompanied by two friends came to Washington and endorsed the warrant. That is as nearly as I can answer that.

Q. That is not quite an answer to my question, what I asked is had you any other difficulty or controversy not recited on your direct examination regarding these fees, and obtaining the necessary papers from the Court House? A. It is impossible for me
58 to say without reading my direct examination and all of the correspondence attached to the same as exhibits.

Q. I ask you then to do that and testify fully as may be necessary at the next sitting of this examination. I should like you to show fully and exactly what controversies and difficulties you have had in all this work for which you have employed local counsel. I request you also to produce for the purpose of the next sitting all further correspondence that may have been had by Davis & Tucker or the receivers with counsel employed by them or with persons having or asserting an interest of any kind in the claims including the copies of all letters of Davis & Tucker and the receivers.

Mr. TUCKER: I offer in evidence on behalf of the complainant the office papers produced by the defendant in response to a motion of the complainant, in the cases of John Young, John M. Nace, Isaiah Beans, Solomon Beery, John W. Fletcher, Joseph Egner, William Goddard, Thomas Kidd, Hugh Murdock and E. H. Allston, for the purpose of showing that the defendant's connection with these claims post-dated that of the late George B. Edmunds. I direct particular attention in the matter of the claim of John Young to two letters taken from the defendant's office files, one dated in 1888 at Water Valley, Mississippi and addressed to Edmunds and Moyers, Corcoran Building, W. D. C. and signed by Dr. John Young, the other dated February 8, 1888, at Water Valley, Mississippi and addressed to George B. Edmunds and signed by the same persons; also to a letter contained in the office files of the defendant
59 in the case of E. H. Allston, dated at Georgetown, South Carolina, March 5, 1887,——

Mr. CARTER: I must object to this designation by the selection of certain papers in each of these files and his attempt to have them specially considered and to impress them upon the mind of the Auditor. He has offered the whole jacket in each case in evidence and if that is admitted he has no right to select and comment on some of the papers and thus encumber this record and increase the cost.

The AUDITOR: The objection is overruled.

Mr. TUCKER: — addressed to George B. Edwards, Attorney-at-Law, Washington, D. C., and signed by S. S. Fraser.

Mr. CARTER: I now object to the introduction in evidence of these jackets on the ground that no one can be compelled to bring and deposit in Court for evidence the books in use in his business. There is no objection to the selection of such papers as counsel may deem pertinent, and to use in evidence all copies of these, subject of course to the similar selection and copying at the defendant's instance of such of the papers as may be of value to him. The objection is only to the deposit in Court and retention here of these papers. Of course if this objection is sustained I shall withdraw my objection just made to the selection by counsel of certain papers by the Auditor.

The AUDITOR: The objection is overruled.

Mr. CARTER: There will be no objection to Colonel Moyers sending a clerk here to make a schedule of the papers in these
60 jackets. He informs me that some of his papers have been lost from his jackets heretofore while the jackets were deposited in the Court, and he should like to take some security that it will not happen again. There will be no objection, I suppose?

The AUDITOR: Either of the parties to this controversy have an undoubted right of access to all papers offered in evidence and admitted and all records produced in this case, in the matter of this accounting, subject only to such supervision and restriction as may be necessary to insure their safety.

Adjourned to Friday, January 2, at 2 o'clock.

FRIDAY, *January* 2, 1903—2 p. m.

Hearing pursuant to adjournment.

Present: Mr. Tucker and Mr. Carter.

Mr. TUCKER: I have before me in pursuance of the request of the counsel for the defendant my letter press books containing copies of all correspondence in the matter of the collection of the Treasury warrants in question, and submit them to his examination.

Mr. CARTER: You have testified regarding a letter written by you and Mr. Woodard as receivers to Colonel Moyers after the Court's order of May 28, 1902 to furnish you powers of attorneys and other papers relating to the claims in question. Please consult
61 your letter book and give the date of that letter?

A. June 10, 1902. In my examination I should have stated "immediately after the passage of the order of June 6, 1902, which supplemented the previous order of the Court of May 28, 1902." I submit a copy of this letter of the receivers to Colonel Moyers and it will be found on page 266 of the letter press book of Davis & Tucker. After having been copied in the book and signed by me it was sent to Mr. Woodard who signed it and sent it to Colonel Moyers.

Q. You of course don't know when Mr. Woodard forwarded this letter to Colonel Moyers? A. No, but I do know that he forwarded

it, for I have in my hand a letter from Colonel Moyers', then counsel, Mr. A. A. Birney, dated June 26, 1902, and which I here submit, in which he acknowledged the receipt of the receiver's letter to Colonel Moyers. I offer the same in evidence marked C. C. T. A. The signed statement of Mr. Moyers referred to in Mr. Birney's letter has already been offered in evidence in my previous examination.

Q. I find here another letter addressed to yourself and Mr. Woodard and signed A. A. Birney and bearing date of August 6, 1902. I offer this in evidence and ask you to give its history? A. On July 7, 1902 the receivers wrote to Mr. Moyers requesting him to send them a copy of his contract with W. A. Montgomery in the matter of the Kidd claim and if he did not have a copy of the contract to send them copy of any letters that he might have received
62 from Mr. Montgomery upon the subject of his position as local attorney. This letter will be found on page 304 of the letter press book of Davis & Tucker. Again on July 14, 1902 the receivers wrote to Mr. Moyers stating that O. I. Thomas claimed to be entitled to one-half of the fee of the Beans case and that Mr. Thomas had furnished a copy of the agreement with him. The receivers state that they did not desire to make a settlement with Mr. Thomas until his statement was verified. A copy of this letter to Mr. Moyers will be found on page 310 of Davis & Tucker's letter press book. Again on July 21, 1902, the receivers wrote to Mr. Moyers stating that in the Hugh Murdock case one Charles L. Abernethy claimed to be entitled to fifty per cent. of the fee and asked Mr. Moyers what if any contract he had with the claimant and whether he would be willing that Mr. Abernethy should receive what he claimed. A copy of this letter will be found on page 320 of Davis & Tucker's letter press book. Again on July 24, 1902, the receivers wrote Mr. Moyers asking him to furnish them with a copy of any fee contract that he might have in the matter of the Egner claim stating the administrator claimed that a contract was made with Colonel Moyers whereby only one-third was to be charged. This letter is to be found on page 325 of Davis & Tucker's letter book. It is in reply to these letters that Mr. Birney's letters of August 6, 1902, was written. The letters from Colonel Moyers have been offered in evidence heretofore in this examination.

Q. All these enclosures mentioned by Mr. Birney in these two letters were actually forwarded by him with the letters were
63 they not? A. Yes.

Mr. CARTER: At the last sitting I inquired of you whether you and Mr. Woodard as receivers had any difficulties or controversies with claimants or local attorneys or other persons claiming interest in the fees you were undertaking to collect, and asked you to consult your correspondence so as to be able to answer the question to your satisfaction at this time. I wish to explain that what I then meant and now mean to inquire about in that connection is not the mere labor which the collection of these moneys imposed on the receivers, as a matter of necessary routine, but actual conflicts and controversies arising from an assertion by such persons as I have indicated of an interest of one sort or another in the proceeds from these

cases. Inasmuch as the examination is about to be adjourned I explain the question so that you may be able to answer it at the next sitting with as little difficulty as possible.

Adjourned to Wednesday, January 7, 1903, at 10:30 A. M.

WEDNESDAY, *January* 7, 1903—10:30.

Hearing pursuant to adjournment.

Present: Mr. Carter and Mr. Tucker.

Mr. TUCKER: In reply to the question with which the previous session closed I take up the cases which were settled by the re-
64 ceivers to indicate generally what if any trouble was experienced in their settlement.

Mr. CARTER: Objection is made to this on behalf of the defendant except to the extent required in answering the question, I have not inquired of any transactions of the receivers except in relation to any actual controversies which have not been already narrated by the witness. Except in reference to such controversies not heretofore testified to, the history of the transactions of the receivers would not be responsive to the question and would be a mere repetition of the testimony already given by the witness on his direct examination.

Mr. TUCKER: In the case of Neil, administrator of Egner, the administrator, Neil, claimed that the fee to be paid was not one of fifty per cent. but of only one-third of the amount of the appropriation. The receivers had some controversy with him over this subject which was terminated by the administrator receding from his position and agreeing to pay and paying the fee of one-half.

In the case of William Goddard, of whom J. Howell Green was the guardian, the receivers had considerable controversy with the guardian, who, after notice by the receivers of their appointment, endeavored to collect the money appropriated in settlement of the claim direct from the Treasury Department. In this he was unsuccessful and the receivers collected the warrant and disbursed the proceeds, one-half to Mr. Green as guardian and one-half to themselves. It will also be seen by Mr. Green's letter to Davis & Tucker, dated September — that Mr. Green claimed that one P. L.
65 Hampton had made a claim upon him for services rendered in the matter of the collection of the claim, saying that he was entitled to part of the fee. Mr. Green further states in his letter that he would see that Mr. Hampton was satisfied with $15, and sent to the receivers an order for the distribution of the amount appropriated, $241, by which he would have received $135.50 and the receivers $105.50. The receivers declined to consent to such a distribution and the matter was finally settled by the receivers obtaining one-half of the proceeds of the warrant and Mr. Green the other half as guardian.

In the case of Edward S. Nace, administrator of John M. Nace, the receivers had no controversy with the claimant after they succeeded in locating him although considerable correspondence with him was necessary in order to satisfy him of the right of the receivers

to the fee. The settlement with him was on the basis of the Edmunds contract for one-third.

In the case of C. L. Kidd and Mary O. King, executors of Thomas Kidd, much difficulty was experienced in settling the claim of W. A. Montgomery who claimed to be entitled to fifteen per cent. of the amount of the recovery by reason of a contract with Moyers. I have heretofore stated some of the details of this controversy and shown that it was necessary finally for the receivers to bring suit in order to settle the matter. I refer to my previous testimony regarding this case.

66 In the case of Hugh Murdock, Charles L. Abernethy an attorney of Beaufort North Carolina, claims to be entitled to a portion of the fifty per cent. fee. His claim has not yet been settled. Since the last session, I have been advised by the Treasury Department that administration has been taken out upon the estate of Murdock and certified copies of letters of administration have been filed in the Department, and at the suggestion of the Department the receivers have made a formal application for the warrant.

In the case of Solomon Beery, there was a controversy with the claimant, not over the fee which was fifty per cent., but over the question whether he was entitled to be reimbursed for expenditures for taking testimony out of the fee agreed to be paid the attorneys. Mr. Herbert J. Taylor also claims to be entitled to part of the fee as a local attorney, for professional services rendered and the expenses incurred in the prosecution of the claim. He claims to be entitled to $20 of the $50 fee while the claimant himself claims to be entitled to $16 of the $50 fee for his expenditures. If both claims shall be allowed, the net fee will be $14 subject to the charges of Conrad and Conrad of Harrisonburg employed by the receivers as local counsel.

In the case of John W. Fletcher I can only say that after some correspondence Fletcher came to Washington and endeavored to settle the matter with Moyers. Finding that he could not do so he came to me and endorsed the warrant which was cashed and

67 he was paid one-half of the proceeds.

In the matter of the claim of John Young there was no controversy with Mr. D. R. Wagner, the administrator, as to the amount of the fee, after the receivers succeeded in satisfying him that the settlement should be with the receivers and not with Moyers.

In the matter of the claim of Nancy H. and Rebecca H. Beans, executrices of Isaiah B. Beans, the receivers had considerable controversy with O. I. Thomas who claimed to be entitled as local counsel under a contract with Moyers to one-half of the fee. The controversy was settled by a recognition of the claim of Mr. Thomas and he was paid the amount of his claim. See previous testimony, and the correspondence of Davis & Tucker with him.

In the matter of the claim of Robert H. Rue, administrator of Edward S. Alston there was no controversy with the claimant as to the amount of the fee after the receivers succeeded in satisfying the

claimant through their correspondent Mr. Walter Hazard of Georgetown, South Carolina, that the settlement should be with them. See the correspondence attached to this report in the matter of this claim.

This answer is limited to any controversies as to fees. Of course other difficulties were experienced in collecting, first the warrants and then securing the powers of attorney or endorsement of the claimants.

Mr. CARTER:

Q. These controversies which you have just testified are all contained in the letters heretofore filed as exhibits, and the letters of Davis & Tucker constituting the other side of the correspondence, are they not? A. I presume mention of such controversies are contained in such correspondence.

68

Q. It seems to me the letters themselves constitute the controversies where such occur, is this not true? A. I think my way of putting it is clearer.

Q. I am not proposing a competition in rhetoric; I am only seeking to ascertain whether the facts constituting these so-called controversies were not the writing of these letters to which I refer? A. I can say that we had no verbal controversies with any of the claimants because we only dealt with them by correspondence.

Q. I have heretofore asked you whether, before employing local counsel, you corresponded with the claimants or the representatives of their estate or other persons claiming interest in the appropriation. Except as heretofore shown did you, before or after employing such local attorneys and proceeding through them to collect and distribute the appropriations, advise with Colonel Moyers about the controversies and the merits of the same and inquire of him the facts relating to them? A. In answering this question I must first state that we did not collect or distribute or seek to collect and distribute any of these claims through any local counsel. The employment of local counsel was simply for the purpose of obtaining the evidence required by the Treasury Department as preliminary to a settlement with the receivers. I have heretofore stated that the course the receivers took after they were directed by the order of the Court of May 28, 1902 and June 6, 1902 was to write to Colonel Moyers and request of him, as required by paragraph 3 of the order of May 28, 1902, all papers connected with these claims in his possession, with the names and post-office addresses of the claimants or if dead their legal representatives. This letter of the receivers was dated June 10, 1902. No response to it was received until June 26, 1902, the date of Mr. Birney's first letter and neither in that response nor in any subsequent response was the information sought fully furnished. In the meantime, about the date of the passage of the first order the receivers wrote to local attorneys living at or near the homes of the various claimants to ascertain whether powers of attorney had been furnished Moyers to collect these warrants, the purpose being if such powers of attorney had been furnished to take the necessary steps to procure them from Moyers.

69

This initiated the correspondence with these local attorneys and afterwards they, or most of them, were requested to furnish us with the different papers and documents required by the Treasury Department as evidence before the claims could be settled.

Q. After these controversies and difficulties about which you have been testifying arose or were threatening did you advise with or seek to advise with Colonel Moyers about them and inquire of him the facts pertinent to them? A. In every case where the claimant contended that the fee to be paid was less than fifty per cent., the
70 receivers communicated with Mr. Moyers directly or with him through his then attorney, Mr. Birney, and in no instance was there any settlement with any claimant for less than fifty per cent. or with any local attorneys who claimed to be entitled to a portion of the fee until both Mr. Moyers and Mr. Cummings as parties to this cause consented to a recognition of such claims.

Q. In the cases where the consent of Moyers or his counsel to these settlements with claimants or local attorneys was obtained the same appears in the correspondence you have already filed, does it? A. Yes, so far as I now recall.

Q. Did you inquire of Mr. Moyers the facts regarding the rights of this man Hampton in the Goddard case? A. No, because it was not necessary to recognize Hampton's claim to obtain the settlement with the guardian of the claimant.

Q. Did you inquire of Moyers the address of Nace, the administrator? A. No further than the general request in the receiver's letter to Moyers of June 10, for the names and addresses of all of the claimants or their legal representatives to which request there was no response.

Q. Did you interrogate Moyers about the claim of Charles L. Abernethy in the Hugh Murdock case and the facts in which it originated? A. I wrote to Mr. Birney about this claim telling him of Abernethy's claim to a portion of the fee and in response
71 received a letter which has been heretofore filed, and in which Colonel Moyers refused to consent to recognize the claim of Mr. Abernethy.

Q. Except your letter to Mr. Birney to which he replied in his letter heretofore filed by you of August 6, 1902, did you have any conference or make inquiry of Colonel Moyers about the facts of O. I. Thomas to a share of the fee? A. I don't remember whether I wrote any other letters or not about the claim, if so they will appear in the letter book. I had a number of talks with Mr. Birney about these claims in which there were controversies and disputes but whether the Beans case was the subject of any of these conferences I do not now recall. I never had any personal dealings at all with Mr. Moyers.

Q. Do you recall whether there was any such conference or inquiry in regard to the claim of G. Whitson Graham in the Beery case, other than the letter written by you to which Mr. Beery's letter of June 26, 1902 is a reply? A. I don't recall ever having made any special inquiry about Mr. Graham's claim either of Mr. Birney or Mr. Moyers.

Q. Did you have a conference with or inquire of Colonel Moyers about the claim of Herbert J. Taylor in the same case? A. No, because Mr. Taylor's claim was never recognized and I conceived it simply to be my duty to report that such a claim was made leaving it to the Court to act upon it as it should deem proper. It
72 was only in cases where the receivers could not make a settlement to the claimant because of some dispute or controversy that the receivers sought the consent of the parties to this Cause to recognize adverse claims upon the proceeds of the warrants.

Mr. Tucker announces his case as closed in chief with leave to the counsel for Defendant Moyers to further cross-examine at the next hearing if he shall find it so necessary.

Adjourned to Friday, January 9th, 1903, at 2 o'clock.

TUESDAY, *January* 13, 1903—10:30 a. m.

Hearing pursuant to adjournment.

Present: Mr. Tucker and Mr. Carter.

Mr. CARTER: I offer now to show in each of the cases here under investigation what services were rendered before and what services were rendered after the death of George B. Edmunds, and then to prove by competent witnesses having knowledge of such matters by reason of long practice in the Court of Claims and before Congress in these Bowman Act and Tucker Act cases what compensation was and is due to the alleged partnership of Moyer and Edmunds, and what is due to Moyers in respect of the services so rendered after the
73 death of Edmunds; proving as to these services of Moyers subsequent to the death of Edmunds both, (1) what he is entitled to on the theory of an absolute dissolution, for all purposes of said partnership by the death of Edmunds, and (2) what compensation should be allowed him, on the theory of a continued prosecution and closing of the partnership business, for the services thus necessarily rendered by him.

Mr. TUCKER: I object to the testimony offered upon the ground that in these cases the defendant is not entitled to compensation as surviving partner for services rendered by the partnership other than his share of the earnings of the partnership.

After argument an adjournment was taken to Thursday, January 16, 1903 at 12 o'clock.

FRIDAY, *January* 16, 1903—10:30 a. m.

Hearing pursuant to adjournment.

Present: Mr. Carter and Mr. Tucker.

Mr. CARTER: I now offer to show the services performed in these cases respectively before and after the death of George B. Edmunds and then to prove in the way proposed in my foregoing offer what compensation the partnership of Moyers and Edwards and therefore the estate of Edmunds are entitled to on a *quantum meruit* for services rendered to the time of Edmunds' death; this, for the purpose of distinguishing the compensation due out of these fees
74 for services to the time of Edmunds' death from the compensation for the services rendered after his death and there-

fore of affording to the Court a correct basis for ascertaining what is due to the estate of George B. Edmunds out of the entire fees.

Mr. TUCKER: As showing partnership transactions I have no objection to any of the Court of Claims files heretofore produced from the Court of Claims or properly verified abstracts of them or of the docket entries of the several cases being offered in evidence to show the services actually performed by the partners or either of them in the prosecution of the claims, nor have I any objection to other evidence tending to show the same thing. I do object, however, to any evidence offered merely for the purpose of supporting any claim for compensation by the surviving partner for services performed after the death of his co-partner, and also to any offer of evidence to show the value of the services performed by the partnership or by either partner at any time during the existence of the partnership or before or after the death of the deceased partner.

The AUDITOR: Assuming that this offer is made for the purpose of limiting any allowance to the complainant or the estate or Edmunds of the fees earned upon either of the claims included in this reference I must sustain the objection upon the ground that the evidence offered would not be material to the issues here.

Adjourned to Friday, January 23, 1903, at 10:30 A. M.

75 FRIDAY, *January* 23, 1903—10:30 a. m.

Hearing pursuant to adjournment.
Present: Mr. Carter and Mr. Tucker.

On application of the counsel for the defendant an adjournment was taken to Tuesday, January 27, 1903 at 10:30 o'clock.

TUESDAY, *January* 27, 1903—10:30 a. m.

Hearing pursuant to adjournment.
Present: Mr. Tucker and Mr. Carter.

Mr. GILBERT MOYERS, having been sworn, testified as follows:

Q. In reference to each of the cases with which this examination is concerned will you please consult your office jackets and any other memorandum which you know to be correct also the Court of Claims files where necessary and give the history of your connection with the case, you can take first the case of Joseph H. Egner.

Mr. TUCKER: I object to that question.
The AUDITOR: The objection is sustained.

Mr. CARTER: I will change the verbiage of the question a little. You will consult the papers which I have mentioned purely for the purpose of refreshing your recollection about the transactions to which they relate, confining yourself to the papers executed by you or by others for you in the course of your business and which you know to be genuine and to papers received by you in
76 the course of your business and to Court files and then relate facts as you remember them showing your connection with the case?

Mr. TUCKER: I think the question is equally objectionable, and I object to it on the ground that it calls for incompetent testimony.

The AUDITOR: The objection is sustained.

Mr. CARTER: Please state what your connection with the case of Joseph A. Egner was.

A. I was the attorney in the prosecution of this claim before the Court of Claims in securing its reference to the Court under the Bowman Act. I secured findings and filed all the briefs, incurred all the expenses incident to the prosecution of the claim, and gave general supervision and attention throughout up to the findings made by the Court, and I had the findings certified to Congress.

Q. How did this case come into your hands? A. Through local attorneys in the State of Arkansas.

Q. Who were they? A. Mr. Baxter was one of them. I had considerable correspondence with Judge Baxter of Batesville, Arkansas.

Q. From whom else did you receive authority in this case? A. He was the principal one I corresponded with in reference to this case. Egner was dead as I recollect it and Judge Baxter represented the heirs at law. He employed me to look after the case as early as 1885.

77 Q. Was there any administrator of the estate while the case was in your hands? A. I must have the papers to refresh my memory. I do not carry such matters in my head, the papers will show.

Q. I direct your attention to what seems to be a letter to you from Mr. Baxter at Batesville, Arkansas of date, June 5, 1891 and ask you whether or not you had any connection with the prosecution of this claim before you received this letter, if so when did the case come into your hands? A. My connection with this case began in 1885. (I had it referred to the Court of Claims in March 1886 and entered my appearance in Court.) I secured the reference to the Court in 1896, but I was employed in 1885, that is my first connection with the case. There is nothing in the records showing the appearance of any one else in connection with the case.

Q. Did you ever have any agreement or dealings of any kind with George B. Edmunds in regard to this case?

Mr. TUCKER: I object as calling for testimony inadmissible under the statute.

The AUDITOR: The objection is sustained .

Mr. CARTER: I propose to prove by the witness that he never had any agreement, transaction, or conversation or understanding in any form with George B. Edmunds regarding this case.

78 Q. When did you first hear that it was claimed by anyone connected with or interested in the estate of George B. Edmunds that Edmunds had any connection with or interest in this case? A. This suit now pending in which this testimony is now being taken.

Q. Did you ever hear in any way during Edmunds'-life time that he claimed any interest in or connection with this case?

Mr. TUCKER: I object on the ground that it calls for hearsay testimony and also is an adroit attempt to avoid the prohibition of the statute.

The AUDITOR: The objection is sustained.

Q. Did you ever in any way other than by conversation or transaction of your own with Mr. Edmunds hear during his life time that he claimed any connection with or any interest in this case?

Mr. TUCKER: I object on the same grounds.

The AUDITOR: The objection is sustained.

Q. I have asked you what was the first notice that you received that an interest was claimed in this case on behalf of the Edmunds estate. I ask you now what was the first intimation you ever received that Edmunds himself claimed any interest in the case if you received any such intimation.

Mr. TUCKER: I object as leading and suggestive and also as an additional attempt to evade the prohibition of the statute.

The AUDITOR: The objection will have to be sustained.

79 Q. Have you produced here all of the papers from your office relating to this case? A. I think so, there may be an old jacket which I have not found but I am not aware of it. I have made a pretty careful search or caused one to be made.

Q. Did you ever receive at your office from any source any papers other than those here filed showing any connection of any other person or attorney with this case? A. I think not.

Q. I take now the case of William Goddard, please state *which* and how your connection with this case began? A. My earliest connection with this case was in the Spring of 1885. I continued in charge of the case until I secured its reference to the Court of Claims under the Bowman Act by the Committee of War Claims of the House. I do not find in the jacket a communication that was here bearing date as early as 1885.

Q. What part, if any did you ever have in obtaining the reference to the Court of Claims? A. I had it referred in 1892. In these cases, it is only necessary for the papers to be sent down from the Clerk's office of the House of Representatives on the request of a Member to the Committee on War Claims and up to a very recent date it was the practice of the Committee just to send those papers to the Court, no petition was required, just simply the papers, or the reference of the papers, rather, to the Committee.

80 Q. So far as you know was anything done by George B. Edmunds before you entered into this agreement with him in 1888 toward having this case referred to the Court or toward instituting its prosecution there?

Mr. TUCKER: I object as inadmiss-ble under the statute referred to and also as calling for incompetent and hearsay testimony.

Mr. CARTER: I am speaking now of transactions which you yourself had with Edmunds?

The AUDITOR: The objection is sustained.

Q. What was the first information or suggestion you ever received or heard that George B. Edmunds himself or his administrator after his death claimed that he was connected with this case or had a right to a share of the proceeds? A. This suit by Cummings who was the administrator.

Q. Taking now the case of John M. Nace when and how did your connection with that case begin? A. This claim originally came into my hands as attorney through the late George Taylor, a resident of this city for many years, and a lawyer engaged in the prosecution of claims. He turned his business over to me early in the 80's, this among other cases. I procured the reference of this case to the Court under the Bowman Act and was the attorney of record in said court during its prosecution had the findings referred to Congress for appropriation, and in fact have been the only attorney representing the prosecution of the case since its rejection by the Commissioners of Claims in 1873. Nothing was done in the
81 case or could be done after its dis-allowance by the Commissioners of Claims until the Act of Congress approved March 3, 1883, known as the Bowman Act. From that time on I have attended steadily to its prosecution.

Q. Did you ever see George B. Edmunds rendering or attempting to render any service in this case either before any Committee of Congress or in the Court of Claims or any where else?

Mr. TUCKER: I object to that as indefinite, vague and incompetent and also as an attempt to evade the prohibition of the statute referred to and also as leading and suggestive.

The AUDITOR: The objection is sustained.

Q. Other than transactions or conversations with yourself did you ever see Mr. Edmunds rendering or attempting to render any service in this case any where?

Mr. TUCKER: I object to this question unless it is made more definite. I will have no objection to this witness being asked to testify as to any occasion if there was any in which he saw the decedent prosecuting this or any other claim which is being investigated in this reference in the Court of Claims or before any Committee of Congress or at any other specified place at any time or doing any act in any way connected with this or any of the claims referred to.

Mr. CARTER: If Mr. Edmunds rendered any service whatever in this case either in the Court of Claims or before Congress or any of its committees or in any other place or way, whatsoever, whether before or after this so-called partnership agreement between
82 him and Colonel Moyers was entered into, I am willing to prove that, I therefore am content to let the question stand as it is.

The AUDITOR: The objection is sustained.

Q. In this case, when and in what way did you receive your first knowledge or intimation that George B. Edmunds himself while alive or that his administrator after his death claimed that he was connected with this case or any interest in the proceeds? A. This suit in which this testimony is being taken brought this matter to my knowledge.

Q. You say with this case the other business of George Taylor came into your hands in the early 80's was that before or after 1888? A. Before, soon after the passage of the Bowman Act or about that time.

Q. Go now to the case of the estate of Thomas Kidd, when and how did your connection with that case begin? A. Mr. Baldwin whose address I think is Edwards, Mississippi had charge of this case while it was pending before the Commissioners of Claims. The attorneys of record before the Commissioners was the firm of Barley and Jenner of this city. As early as 1884 I had communication with Mr. Baldwin in regard to this case and as to propriety of reviving it and securing the reconstruction in the Court of Claims under the Bowman Act. I also had some correspondence with Judge Marshall of Vicksburg. I had the case referred to the Court without the coöperation of any other attorney on March 3, 1888. I entered an appearance in this case April 13, 1888. Subse-
83 quently to the filing of this appearance the name of George B. Edmunds was placed on it without my knowledge and consent, erasing "Attorney for Claimant" and also the notice of appearance was likewise changed on the inside.

Q. Do you find the name of George B. Edmunds any where else on the Court papers in this case? A. I do not.

Q. Including those before Congress? A. I do not, I will run the papers over again however so that I will be absolutely correct. Except the power of attorney which has just come under my knowledge it being outside the files and in the hands of the complainant's attorney. It was filed among the papers in this case appointing the power of attorney to George B. Edmunds which was evidently placed in the files by himself without my knowledge or consent, as I am attorney of record and recognized as such by all the papers in the case in the way of briefs and filing the testimony performed all the essential work in conducting the prosecuting of this claim as sole attorney.

Mr. TUCKER: Seeing that the witness was examining the Court of Claims files I handed the power of attorney he has just referred to, having taken it from the exhibits to the complainant's testimony which had been copied by the stenographer and which were altogether in one bundle.

A. I do not find any other papers with Edmunds' name endorsed on them in the files in this case.

Q. You say you had this case referred to Court, did or did
84 not Mr. Edmunds assist you in the labors involved in that?

Mr. TUCKER: I object.

The AUDITOR: The objection is sustained.

Q. Excepting the petition which seems to have been filed before the Committee on War Claims of the House of Representatives (if that was filed by Mr. Edmunds) did or did not he, so far as you know, ever render any service whatever before the Committee or any Committee of either House or in the Court of Claims in regard to this case? A. He never rendered any service in the case or was connected directly with its prosecution.

Mr. TUCKER: I object to the answer on the grounds previously stated and move to strike the same out.

The AUDITOR: The objection is sustained.

Q. When and how did you receive your first notice or intimation either that George B. Edmunds in his life time had claimed or that his administrator since his death claims he was connected with the prosecution of this case and is entitled to a share of the proceeds? A. At the commencement of this suit.

Adjourned to Wednesday, February 4, 1903, at 2 o'clock.

THURSDAY, *February* 12, 1903, at 1 p. m.

Hearing pursuant to adjournment.

Present: Mr. Carter and Mr. Tucker.

Mr. Gilbert Moyers was recalled to the stand.

85 By Mr. CARTER:

Q. We will now take up the case of Hugh Murdock, please give the history of your connection with this case. A. I secured this reference to the Court of Claims as shown by the record on February 19, 1889 or order of the Committee on War Claims of the House. This claim is from North Carolina and I was employed in its prosecution by C. C. Poole of that state as early as 1885. Mr. Poole who was a brother of Senator Poole of that the state of North Carolina was here in Washington soon after the passage of the Bowman Act in 1883. I then made an arrangement with him to do all the business in his section of his state and this was one of the cases that he sent me. I have attended to the prosecution of the claim throughout, no attorney assisting me either before the Court of Claims or in securing the appropriation by Congress. I might state further that the original attorney in this case, that is the original attorney before the Commissioners of Claims was J. R. Doughty of Newport, North Carolina.

Q. When was this arrangement between you and Poole made? A. 1885 as I recall it, it may have been 1884, not very long after the passage of the Bowman Act in 1883.

Q. Are you sure whether it was before or after you went into this arrangement with Edmunds before the prosecution of this case? A. Before I knew Edmunds.

86 Q. Please now state your connection with the Solomon Beery case? A. Solomon Beery is a Virginia case that came from the section of the Country where Mr. Graham, George W. Graham resided, with whom I made arrangements to prosecute

all claims that he sent me after the passage of the Bowman Act. As early as 1884 I received this claim from him and he is entitled to one-half of the fee for prosecuting it less expenses.

Q. State if you can how the reference of this claim to the Court was obtained? A. I procured the reference in 1888. I was employed not only in this case but a number of others by Mr. Graham, that is he sent me the case. Many of them have been acted upon by the Court and rejected on account of the loyalty not being proved satisfactorily. A very few of them were allowed. Mr. Edmunds had nothing to do with the case. I attended to it in the Court of Claims gave it personal attention throughout and used my best efforts to secure an appropriation to pay the findings in the Court, $100.

Q. Please give the history of your connection with the case of John W. Fletcher? A. I was employed to prosecute that claim by Fletcher himself. I have had no correspondence with any one else that I can recall in connection with the case. The claim was referred to the Court through my efforts in May 1888. I was employed in 1886 or 1887 by Mr. Fletcher.

I might say in connection with the previous case of Beery that I find that Mr. Graham's name is endorsed on my original
87 jacket of the papers in the case. His name would not appear there unless I had received the claim from him.

Q. How was the reference of this Fletcher case obtained? A. I think I have testified to that. I find nothing in the record of the Fletcher case to indicate any connection with George B. Edmunds.

Q. What was your connection with the case of Edward H. Alston? A. The claim of Edward H. Alston, deceased, was one represented by Judge Merriman, while pending before the Commissioners of Claims. Judge Merriman had an office with me in the 70's and I coöperated with him the prosecution of his claims before the Commissioners to some extent, this case among others. That is I gave him such aid as I could conveniently in my office. I had therefore connection with this case while pending before the Commissioners of Claims through that connection with Judge Merriman. I had this case carried for reference to Congress under the Bowman Act as early as 1886 and by application to the committee on War Claims I secured its reference to the Court. Edmunds does not appear in any way connected with the prosecution nor did I ever know him to have any connection with the case whatever, during its pendency in the Court or before its reference to the Court. I attended to the case in the Court of Claims as attorney of record filed all the briefs, made the answers and arguments before the Court without the slightest assistance of Mr. Edmunds, without
88 knowing him in connection with the case in any way. It is only very recently that I was advised there was any claim of his being interested in this case. If he had lived I am quite certain he would never have made any such claim. He never turned the case over to me. Mr. L. G. Walker of Georgetown, North Carolina has been for some time associated with me in the prosecution of this claim, and he is entitled to his share of the fees for his ser-

vices. I filed the briefs in this case on February 21, 1888 in the Court of Claims.

Mr. TUCKER: I move to strike out so much of the answer of the witness as refers to his relation with the deceased George B. Edmunds, or the fact that any such relations existed with reference to this claim upon the ground that it involves testimony relating to transactions with the deceased.

The AUDITOR: The objection is sustained so far as the — of the briefs is concerned.

Q. When and how was this case referred to the Court? A. I think I have testified as to that. This case was referred to the Court by order of the Committee on War Claims on June 17, 1886, the order of reference is signed James I. Geddes, Clerk to the Committee and addressed to Hon. William A. Richardson, Chief Justice of the Court of Claims.

Q. What was your connection with the claim of Isaiah B. Beans and how did it originate? A. That claim I received, as
89 shown by the jacket from Mr. O. J. Thomas of Virginia. I find his name endorsed on an old jacket of mine doubtless the original jacket in the case. As the jacket consists of an envelope that was printed while I had an office at 1307 E Street in the 70's. All the correspondence that I have appears to have been with Mr. Thomas, so far as I have received letters from him. I have not examined my letter books which I will do before my testimony is closed showing the manner of the correspondence if possible with reference to this claim. Mr. Thomas acted as local attorney. Mr. Edmunds did not employ me to prosecute this claim.

Mr. TUCKER: I move to strike out the last sentence of the witness's answer on the ground heretofore stated and object to such sentence.

The AUDITOR: The motion is treated as an objection and is sustained.

Q. Why did you say that the jacket envelope in this case with the name of Mr. Thomas written on it was in use and with that endorsement when you had your office on E Street? A. The only reason I can give is that my card address is on the corner of the envelope printed, "Gilbert Moyers, Attorney at Law, 1305 E Street, Washington, D. C."

Q. When did you move from E Street? A. I cannot give the exact date, but I can by referring to my books.

Q. Did you ever receive any communication in writing from Edmunds regarding this claim or putting the claim in your hands for prosecution?

90 Mr. TUCKER: I object on the ground heretofore stated.

Mr. TUCKER: I withdraw the objection if the counsel for the defendant expects to show that the defendant did receive from the deceased with respect to this claim any writing and follow that up by producing such writing.

Mr. CARTER: I have no declaration to make about the question until it shall be answered.

The Auditor allows the question to be answered the objection to be ruled upon later.

A. I never did.

Mr. TUCKER: I object to the answer and move to strike out on the ground heretofore stated with reference to similar question.

The AUDITOR: Both objections will be sustained and both question and answer will be eliminated from consideration.

Q. Did Edmunds in any way whatever put this claim in your hands or bring it to you for prosecution?

Mr. TUCKER: Objection is made on the same ground.

The AUDITOR: The objection is sustained.

Q. What is the earliest communication that you received in connection with this claim, what was it and from whom received—referring now to communications from other persons than Edmunds? A. The earliest communication, if I may be allowed to answer, in relation to this case was Miss Nancy H. Beans. She in her
91 letter to me enclosed an affidavit as to the loyalty of her father which was sworn to in 1887 and was produced at my suggestion.

Mr. CARTER: I now offer in evidence the letter dated September 9, 1895, mentioned by the witness and the affidavit referred to in the letter, these to be made exhibits to this deposition.

Q. Did you or did you not have any other correspondence with Miss Beans or any other person interested in this claim, if so, when? A. It is my impression that I did but I can only ascertain definitely by examination of my letter books and letter files which I will do.

Q. Now state your connection with the case of John Young? A. The claim of John Young is from Mississippi. This claim I had charge of in connection with Colonel McAllister of Washington, D. C. while it was pending before the Commissioners of Claims. I do not mean by this that I represented the case as attorney of record before the Commission but I assisted in its prosecution, and was to have a share of the fees in the case if the claim was allowed. I resided at that time in the city of Memphis, Tennessee some twenty-five miles from where Young lived. I acted in the case as local attorney before reviving the case by securing its reference to the Court after it had been disallowed by the Commissioners of Claims. I examined the papers to ascertain the merits of the case. I find a memorandum made at that time in my jacket; I did this frequently.

The papers were on file with the file clerk of the House of
92 Representatives and attorneys had access to them. I secured the reference of this claim to the Court on March 6, 1888. It was referred by the Committee on War Claims. I have steadily prosecuted this case from almost inception either as associate or local attorney or attorney of record in the Court of Claims and before

Congress before its reference. No other attorney appears as having done any work in the Court of Claims except myself.

Q. You say you acted as local counsel in this case when and where was that? A. At Water Valley as I recall, Mississippi. There may have been some proof taken at Memphis. There was another party who represented the claimant I think at Water Valley. I have not examined the record recently but he came to Memphis to consult with me regarding the matter, I was either acting as consulting attorney or attorney in this matter.

Q. When was that? A. During the 70's when the claim was pending before the Commissioners of Claims.

Q. You resided in Memphis then, did you not? A. I did.

Q. When did you come to Washington? A. 1891, I resided in Memphis 26 years.

Q. When did you establish an office in Washington. A. 1874, but I was here before that—off and on and gave attention to business in the department- and elsewhere.

93 Q. Referring to this memorandum you made from the papers in this case, where were the papers at that time? A. I made this memorandum at the capital as I used to be in the habit of doing calling at the file clerk's office and he would send for the papers and I would sit down at a desk there and make such abstracts as I thought proper and necessary for my guidance.

Q. As I understand it was while the case was pending before Congress for reference to the Court under the Bowman Act? A. Certainly.

Mr. TUCKER: I ask the stenographer to make a memorandum referred to by the witness an exhibit.

Adjourned to Wednesday, February 18, 1903 at 10:30 A. M.

WEDNESDAY, *February* 18, 1903—10 a. m.

Hearing pursuant to adjournment.

Present: Mr. Carter and Mr. Tucker.

Mr. MOYERS was recalled to the stand.

By Mr. CARTER:

Q. You have filed in this case a list of cases which you say were those that were put in your hands by George B. Edmunds, as to each of the ten cases with which this reference is concerned and

94 which are not included in that list you will please state whether you ever received from George B. Edmunds any form of writing putting the case in your hands, and in any case where you did receive such writing produce it.

Mr. TUCKER: I object as calling for testimony relating to transactions with the decedent.

The AUDITOR: The objection is sustained.

Mr. CARTER: I offer on behalf of the defendant as to each of the cases concerned in this reference and not included in the list of cases heretofore filed by him to show that he never received any writing of such character from George B. Edmunds.

The Auditor informs the counsel that he declines to rule upon offers of proof, preferring that such offers should be made in the ordinary way of propounding the interrogatories to the witness and then ruling upon the objection if any should be made.

Mr. CARTER: I hope the Auditor will not object to noting and reporting such offers. Of course they offer nothing for him to rule on.

The AUDITOR: The offer must be disposed of in some way.

Q. In reference to each of such cases state whether or not in any transaction between yourself and George B. Edmunds in person or if in any way he attempted to put the case in your hands for prosecution.

Mr. TUCKER: I object on the same ground.

The AUDITOR: The objection is sustained.

95 Q. While you were prosecuting these cases referred to did you have any correspondence or did you receive any other writings from Mr. Edmunds about them. If so produce such writings in so far as they are in your possession.

Mr. TUCKER: I object on the same ground.

The AUDITOR: The objection is sustained.

Q. While these cases were in your hands did you receive any letters from George B. Edmunds about any of them except as has already been testified about. If so produce the letters.

Mr. TUCKER: I object as within the inhibition of the statute prohibiting testimony in such cases as this of transactions between the defendant and the decedent, it being, manifestly the purpose of the question to show if possible that no such letters were received. If there are any such letters I have no objection to their production and admission in evidence.

The AUDITOR: The objection is overruled.

Mr. TUCKER: I note an exception.

A. None whatever.

Q. Did you ever see George B. Edmunds doing anything before any Committee of Congress or in the Court of Claims or before the Department in or about the prosecution of any of these claims, if so state what it was you saw him doing and in what case.

Mr. TUCKER: I object on the same ground as heretofore stated unless the time be fixed the record showing that Edmunds
96 was adjudged a lunatic in 1891.

The AUDITOR: The objection is sustained.

Q. Did you ever see Edmunds do anything as described in the last question in these cases in which acts you did not participate but was merely an onlooker and not joining with or dealing with Edmunds in the matter at all.

Mr. TUCKER: I object on the same ground.

The AUDITOR: The objection is sustained.

Q. Did he and you jointly do anything in these cases except as may be shown by the record.

Mr. TUCKER: I object on the same ground.
The AUDITOR: The objection is sustained.

Q. In each of these cases except as has already been testified state how and when you first learned of any claim whether of George B. Edmunds himself or of the administrator of his estate to a share from the proceeds of the cases as embraced in the partnership between yourself and Edmunds? A. The first intimation I had was this suit and the only knowledge that I had that there were any powers of attorney in the proceeding was the production of those powers of attorney at this hearing, with the exception of one or two of these cases in which there seems to be a power of attorney in the record.

Q. Except those powers of attorney which you have and those which were filed with your knowledge in the Court of Claims did *and* did not Mr. Edmunds ever turn over any powers of attorney to you?

97 Mr. TUCKER: I object on the same ground.
The AUDITOR: The objection is sustained.

Q. Did George B. Edmunds in his life time, except as has been heretofore testified about, ever put in any letter or any other writing addressed and delivered to you any claim to any interest in any of these cases?

Mr. TUCKER: I object on the same ground.
The AUDITOR: The objection is sustained.

Q. Did Mr. Edmunds in person ever make such claim in reference to any of these cases?

Mr. TUCKER: I object on the same ground.
The AUDITOR: The objection is sustained.

Q. You have spoken of Edmunds turning over to you powers of attorney in the cases which were the subject of your partnership transactions with him, what did you do with those powers of attorney? A. I have them all in my safe, I found them recently. They are in a package by themselves.

Q. Do they include any powers of attorney in these cases now under investigation?

Mr. TUCKER: I object, the best evidence being the powers of attorney referred to.
The AUDITOR: The objection is overruled.
Mr. TUCKER: I note an exception.

A. They do not.

Mr. TUCKER: I now call upon the defendant to produce the powers of attorney he has just referred to as being in his possession.
Mr. CARTER: That will be done at the next meeting.

98 Q. Have you any statement of your expenses incurred in the prosecution of the ten cases now under investigation? A. I have a statement in process of preparation. It is not completed, but will be very soon, possibly to-day or to-morrow.

Mr. CARTER: We will produce at the next hearing several state-

ments of expenses and other matters which should properly go into the deposition and will ask to have these papers made exhibits.

Cross-examination.

By Mr. TUCKER:

Q. In the case of Neill administrator of Egner in which you state you were employed by Mr. Elisha Baxter of Batesville, Arkansas as early as 1885, please state whether you have any correspondence or contract with Mr. Baxter showing your connection with this case about that time? A. I do not find any correspondence in the jacket of as early a date as that. This jacket however was made comparatively recently, my old jacket having been lost or mislaid as occurred in several cases in my moving my office to different localities in the last ten or fifteen years. A. I will examine the letter file and ascertain definitely if there is any correspondence among the files in my office.

Q. Please produce any such contract or correspondence at the next hearing. How did you fix the date of 1885 in your
99 direct examination of this case? A. I fixed it from data that I have in my office.

Q. Will you please produce such data at the next hearing? A. I will.

Q. State whether you have any contract for the payment of fees with Egner or his administrator? A. I am not certain, I will have to refer to my contract index.

Q. Please produce such contract or any evidence of it at the next hearing. State why if you were employed in 1885 in this case you failed to have it referred to the Court of Claims by Congress until 1896, eleven years thereafter. A. I cannot state definitely the reason. There are some cases which I have now in my office — which I have been employed some ten or twelve years that have not been referred to the Court. Occasionally cases are overlooked in the many cases that I have and other cases are not pressed for reference to the Court for reasons satisfactory to myself.

Q. Is it not true that this case was referred to the Court of Claims in 1886 or 1888 instead of 1896 as testified to by you? A. I will have to examine the papers in the case. The files of the Court show the reference by the Committee on War Claims on March 16, 1896.

Q. I made a mistake, what I wanted to ask you was whether it does not appear from the files of the Court of Claims in this
100 case that the claim was referred to the Committee on War Claims in 1886 and again 1888. I hand you a petition of W. H. Gillan to Congress which appears in the files of the Court of Claims in this case? A. Yes, it appears that there was a petition filed or rather referred to the Committee on War Claims on February 13, 1888, above that is a date June 13, 1886. This petition seems to have been referred in June 1886 and February 1888 to the Committee of War Claims.

Q. Who prepared and filed that petition. A. I should judge that the petition, I am not familiar with the handwriting of the petition, I could not say who prepared it.

Q. Did you? A. No.

Q. The petition just referred to is stamped as filed in the Court of Claims March 17, 1896, the order of the Committee on War Claims referring the case to the Court of Claims is stamped as filed in the Court of Claims the same date, March 17, 1896, while your appearance as attorney in this case is stamped as having been filed March 21, 1896. When you entered your appearance as attorney in this case did you not know that among the papers was this petition of W. H. Gillan to Congress to refer the case to the Court of Claims? A. I did not necessarily. Because I seldom go to the Court to examine the papers before entering my appearance. If I find a case on my Congressional docket it is the duty and

101 custom of my clerks to file an appearance in such case.

Q. Why did you testify that you had this case referred by Congress to the Court of Claims? A. Because I did.

Q. What evidence is there in the Court of Claims files that you did? A. There is none, there would not necessarily be, because the record of the Court of Claims does not show who procured the reference.

Q. Have you any evidence that you procured the reference of this case to the Court of Claims? A. I am not prepared to state, I may have clerks who were in my employ at that time who could testify about it and I may not, I will see.

Q. As I understand it, your testimony in chief to the effect that you had this case referred to the Court of Claims is based not on any data but simply on your personal recollection? A. Your understanding is not correct. I may have data aside from my personal recollection, but I know positively that I had the case referred to the Court.

Q. What does that data consist of? A. It may consist of memorandum in my office, I will look to see, it may consist of entries in books kept in my office.

Q. What I want to know is whether your testimony in chief that you had this case referred to the Court of Claims is or is not based on your personal recollection unassisted by reference

102 to any data. A. No it does not, because I have entries in my books of all my Congressional cases and I give them personal attention as to the securing of the reference to the Court.

Q. Will you produce your books having such entries in this particular case, that of Egner? A. I will.

Q. In the case of William Goddard you testified in chief that you became connected with this case in the spring of 1885, have you any correspondence or written memorandum showing that your connection with this case began as early as that year? A. The early correspondence in connection with that case of Goddard does not seem to be in the jacket in fact none of it. I will have to examine the files in my office. I am not prepared to say whether they were in the jacket or not because the jacket has not been in my possession for some time.

Q. Will you please produce at the next hearing such correspondence. A. I will.

Q. State whether you ever had a contract for fees with this claimant William Goddard or any one representing him? A. I am not prepared to state without examining my index.

Q. Will you produce such contract or evidence showing that you had such a contract? A. I want to add that I certainly had
103 correspondence in my possession when I made this memorandum in regard to the facts in reference to each one of these cases which is embraced in my answer.

Q. You state in your examination in chief that you had this Goddard case referred to the Court of Claims in 1892 and that your first intimation that you had of any claim by Mr. Edmunds or by his representative that there was a partnership claim was when this suit was commenced. I hand you the petition to refer this claim to the Court of Claims of Mr. Goddard which has heretofore been testified to which is in part in Mr. Edmunds' handwriting, and I direct your attention to the endorsement on the back thereof as follows: "N. J. Hammond by request of G. B. Edmunds, Attorney-at-Law." If you were actually prosecuting this claim as attorney why did you not see that endorsement on this petition which was in the files of the Court in this case, did not that serve to give you an intimation that Mr. Edmunds was connected with it? A. As I stated before I seldom examine the papers in these cases, as I generally trust the abstracting of evidence or do largely to my employees and in entering an appearance I follow the practice as already stated in answer to a previous question hence this paper would not necessarily come under my observation, if it had it would not influence my action in the premises for the reason that the case was not referred under this petition, no petition being necessary for this case to be referred to the Court.

Q. When is that petition which you hold in your hands marked as having been filed in the Court of Claims? A. April 9,
104 1892 presented to the Committee in 1886.

Q. Take from the files of the Court of Claims if you please the reference of the case to the Court of Claims and state when that is stamped as having been filed in the Court of Claims? A. The order of reference made by the Committee on War Claims was on April 9, 1892 and filed in the Court of Claims April 9, 1892 as shown by the record.

Q. So that the petition to refer the case to the Court of Claims and the order of reference were both filed on the same date in the Court of Claims? A. They would necessarily be, because all papers in the case are brought down together and are filed on the same date.

Q. When did you enter your appearance in the Court of Claims? A. May 3, 1892.

Q. Why, if you have been connected with the case since 1885 did you fail to enter your appearance in it for seven years, namely until 1892? A. I could not enter an appearance until the case reached the Court, it is not customary as every lawyer ought to know to enter an appearance in a case when pending in Congress.

Q. Why then if you had been connected with it since 1885 did you not secure its reference to the Court of Claims for seven
105 years namely until 1892? A. For the simple reason as I stated in answer to a previous question that sometimes cases drag along in Congress for several years before their reference. They may be overlooked in the Committee without being really neglected by the attorney.

Q. Please state whether you had contracts for fees with the claimants or any one representing them in the remaining eight cases covered by this reference, namely that of Nace, Kidd, Murdock, Beery, Fletcher, Alston, Beans and Young. A. I will examine the files in my office in regard to these cases the docket entries in these cases and also my list of fee agreements then I can answer that definitely at the next hearing.

Q. Please produce any such contracts if you have them in your possession or any evidence that you have had such contracts. Have you any correspondence with the claimants in the eight cases referred to or with any one representing them to show that you were connected with those cases prior to 1888, the date of your partnership agreement with Edmunds? A. I will make an examination and answer definitely.

Q. Please produce such correspondence if you have any?

Adjourned to Tuesday the 24, at 1:30 P. M.

106 TUESDAY, *May* 12, 1903—10:30 a. m.

Hearing pursuant to notice.
Present were Mr. Tucker and Mr. Carter.

Mr. CARTER: By reason of the appeal taken by the defendant in this case from the decree of the Court on the Auditor's Report on the former reference to him, covering some 25 cases, which appeal will — the decisions of the Court of Appeals on many if not all of the accounts on which the decisions of the Auditor and this report (Supreme Court of the District) must turn, I move your Honor to suspend this reference until there shall have been a decision of the Court of Appeals on that appeal.

Mr. TUCKER: I object.

The AUDITOR: The Auditor declines to accede to the request of counsel to suspend further proceedings in this reference pending the result of the appeal and directs that the defendants proceed with the taking of proof.

Mr. CARTER: Having some doubt of my own as to the power of the Auditor to suspend the reference I shall doubtless apply to the Court itself, to direct that the execution of the reference be suspended pending this appeal to the Court of Appeals. In the meantime, but without prejudice to such motion to suspend the execution of the reference I shall apply to your Honor for a certificate to the Clerk of the Court for a commission or commissions to issue to take depositions of some nonresident witnesses. This I shall do, probably in advance of my application to the Court to suspend the

reference, in order that, if the reference is to proceed no time
107 need unnecessarily be lost in the taking of the depositions.

Mr. TUCKER: I move that the defendant's time within which to conclude his proof under this reference be limited.

Mr. CARTER: I think it will scarcely be feasible to limit the time within which the proposed depositions shall be taken and returned to the Court.

The AUDITOR: The Auditor directs that the defendant shall conclude his proof in this reference within thirty days from this date.

Adjourned to Friday May 22, 1903, at 11 A. M.

TUESDAY, *January* 9, 1903.

Met pursuant to adjournment at 2 o'clock P. M.

Present: Mr. Benjamin Carter on behalf of the defendant, Mr. C. C. Tucker on behalf of the complainant.

C. N. WILSON, a witness produced on behalf of defendant, being duly sworn, testified as follows:

Direct examination.

By Mr. CARTER:

Q. Where do you reside and what is your occupation? A. I reside in this city; at present I am a clerk for Gilbert Moyers, the defendant in this action.

Q. How long have you been in Col. Moyers' employ? A.
108 About five years lately.

Q. Were you ever in his employ before these five years? If so, when and how long? A. I was in his employ about thirty-five years ago.

Q. Are you or not familiar with the methods of his office regarding the prosecution of cases in the Court of Claims and with the practice of the Court of Claims itself? A. Yes, I am familiar with both the prosecution of claims in his office and with the practice of the Court of Claims.

Q. What have your duties been in his office regarding these Court of Claims cases? A. I assisted him in the preparation of them.

Q. What part, if any, have you had in the keeping of his docket and other records taken by him in the prosecution of these cases and the expenses thereof? A. Up to within two years ago I made daily entries from our daily memoranda into the docket of such matters as passed through the office, entered statements of the various cases in the docket, &c., such as filing briefs, testimony, and in fact everything necessary to prosecute the case; also filed them in the Court of Claims and entered them up on the notice books.

Q. Are you or not familiar with the rule of the Court of Claims regarding fees of commissioners for taking depositions and fees of witnesses? A. Yes, I am familiar with the rule of the court
109 in that regard.

Q. Are you or not familiar with the ordinary expenses in this city of having briefs and other such matters typewritten, both as

regards originals and carbon copies? A. Of course it is so much per folio for the original, and if there are three copies printed at the same time it is a question in my mind what the cost of the carbon copies would be, whether the same as the original or a less cost. In this statement that I have prepared, I have made the cost of the carbon copies the same as the original, but, as I say, it is a question in my mind whether that is proper or not.

Q. I hand you now a paper, which seems to be a statement, with reference to each of the ten Court of Claims cases in regard to which this suit is concerned, of the costs of depositions and briefs filed in those cases, with dates of filing, a description of these several papers and of the number of folios or words in each. In the first place, I ask you did you prepare this paper? A. Yes, I prepared this paper.

Q. Please explain how you obtained the data from which you compiled this statement? A. I obtained the data from our dockets and from the court dockets and going through those papers on the table. (Indicating Court of Claims files in these cases.)

Q. In what way did you arrive at the number of words or pages in each of these papers mentioned in your statement? A. By
110 counting the number of words on a number of pages and then making a general average.

Q. Please state what general rule you observed in fixing this average, that is to say, whether you made sure that the number of words stated or indicated in your statement in reference to each paper was certainly not more than the actual contents of the paper? A. In a brief, for instance, containing thirty pages, I would take five or six pages that were medium (that is, that did not have less or more than the others) and then I would average the whole number from those five or six pages; and I think, if anything, I underestimated, so as to be on the safe side.

Q. Do you, or do you not, feel safe to state that the number of words shown in these statements of yours in each instance are not more than the actual contents of the paper in question? A. I do not think that I put in a greater number of words than are in the papers in question.

Q. Do you, or do you not, mean that answer to apply to each individual paper or package of papers of which you have so estimated the contents? A. In fact to all that were examined.

Q. And have you examined and in this way estimated the contents of each paper or collection of papers mentioned in your statements? A. Oh, yes, I have examined each.

Q. I observe that, as regards expenses of taking depositions, you have applied to each deposition or collection of depositions a
111 certain fixed rate per folio, instead of showing expenditures absolutely made by Colonel Moyers in taking such testimony. Explain why this was done. A. I made the computation from the number of folios in each particular package of testimony. Of course that is not all of the expense of taking the testimony, because there are witness fees, which I have not included, and mileage and per diem; that is not included at all. In many cases the commissioner, when sending testimony for the taking of which he has not been

paid, sends the testimony in a sealed package to the clerk of the court, noting on the outside of the package the number of folios and the rate, the amount of witness fees, the amount of mileage, and all added up together forming the charge for taking that particular package of testimony. But my estimate was based simply upon the number of folios or words of the testimony, because I had no means of knowing the mileage or other expenses of witnesses.

Q. But as regards the cost of the commissioner or other person taking the deposition, why do you state the cost at a certain fixed rate, instead of stating the amounts actually paid by Colonel Moyers for this part of the expenses, that is, the mere costs of the commissioner? A. In this statement I only state what the commissioner himself would charge for actually taking the testimony or having it typewritten. If the commissioner himself were a stenographer, he would be entitled to charge five cents more per folio than if he were not a stenographer, and I have stated there that he is entitled to charge twenty cents a folio. By the rules of the court he
112 is allowed fifteen cents per folio for taking testimony, and besides that, he is guaranteed $3 to start with; in other words, if he opens his court and takes the testimony of three or four witnesses which does not amount to twenty folios, he would be entitled to charge $3, or if there were but one folio he could charge $3; whenever his court is opened he is entitled to $3 fees.

Mr. TUCKER: I move to strike out so much of the statement of the witness in answer to this question as states that the rule of the Court of Claims allows a charge to Commissioners of fifteen cents a folio for depositions taken, on the ground that the best evidence of such rule is the rule itself.

The AUDITOR: That same question has been up before, and I held that what the rules of the Court of Claims were would have to be proved by the rules themselves.

Mr. CARTER: I shall proceed, by leave of the Auditor, to ask some other questions having more or less reference to the rules of the Court of Claims, but with the understanding that the rules themselves shall be filed.

Adjourned to 1 P. M., Thursday, June 11th, 1903.

WEDNESDAY, *October* 28, 1903—3 p. m.

Hearing pursuant to notice.

Present: Mr. Tucker and Judge Cole.

Colonel GEORGE W. Z. BLACK having been sworn testified as follows:—

113 Mr. TUCKER: I object to any further testimony being adduced on behalf of the defendants upon the ground that the testimony under this reference has been closed.

By Judge COLE:

Q. Where do you reside? A. My place of business is 1425 New York Avenue West Virginia, is my home.

Q. How long have you been in business in Washington? A. About thirty years.

Q. Continuously? A. Yes.

Q. Thirty years last past? A. Yes.

Q. What has been your business during that time? A. Prosecuting war claims so called.

Q. Against what? A. The United States.

Q. Does that include the class of claims that go to the Court of Claims under the Bowman and Tucker Acts? A. It does.

Q. What if anything did you have to do or what capacities did you have in the prosecution of that class of claims before the southern claims commission? A. I prosecuted that class of claims before the Southern Claims Commission during its entire existence from 1871 to 1880.

Q. Where has your practice been mainly since the South-
114 ern Claims Commission expired? A. In the Court of Claims.

Q. How extensive has your experience been in the prosecution of that class of claims? A. Well I have devoted my entire time to it for thirty years.

Q. I do not assume that you remember and — tell us just how many or very near how many claims of that class you have investigated against the United States but I would like you to give an estimate as near as you can? A. Well without any reference to my books I should say that it must have been three or four thousand cases.

Q. Did you know the late Gilbert Moyers in his life time? A. I did.

Q. About how long did you know him? A. Well I might say as long as I have been practicing here for a period of thirty years.

Q. Do you know how long he resided here prior to his death? A. I should say about twenty-five years.

Q. I would like to know whether you observed him and his methods in the practice and prosecution of claims against the United States in the Court of Claims so as to be able to tell us whether at any time during that practice — personally went to the southern states taking evidence.

Mr. TUCKER: I object to the question as immaterial and irrelevant
Judge COLE: I withdraw the question.

115 Q. Take a case of claim against the United States for stores, farm produce, stock, the farm produce having been taken partly from the land when growing and partly after gathered, hay, grain, live stock of all kinds taken from a plantation in Mississippi in the year 1863 the amount claimed contained seventy-five different items of that kind where it was necessary in order to establish the claim to take the testimony of sixteen witnesses who were at the time the stores were taken living in the vicinity of the plantation from which they were taken but at the time the evidence was taken was scattered over a considerable territory of Mississippi and some in Louisiana, I wish you would state what in your opinion from your experience in that class of claims would have been the proba-

bility of establishing that claim without the aid of a local attorney at the place or near the place where the plantation was located to look up and find witnesses and take their evidence.

Mr. TUCKER: I object on the ground that the matter is not a proper subject of expert testimony and it is irrelevant and immaterial in view of the positive agreement between Moyers and Edmunds, that the hypothetical question propounded presupposes that it was impossible for Colonel Moyers to attend to the taking of testimony himself or to engage counsel at a per diem to take the testimony.

The AUDITOR: The objection is sustained.

Mr. TUCKER: I move to strike out all the testimony of this witness.

116 Miss IDA MAY MOYERS, having been sworn testified as follows:

This witness is one of the administratrices of the estate of Gilbert Moyers deceased the former defendant in this case.

Mr. TUCKER: I object that this witness is incompetent under section 1064 of the Code.

The AUDITOR: The objection is overruled.

Q. Miss Moyers you are the daughter of Gilbert Moyers? A. I am.

Q. Now one of the administratrices of his estate? A. I am.

Q. One of the parties to this suit? A. I am.

Q. I do not know whether it appears in this case but I believe for some years you were a clerk in his office? A. Well, I would hardly say in the capacity of a clerk, because my father paid me no salary, I had an interest in certain cases, which I prosecuted.

Q. How long have you been in his office regularly? A. Three years ago this fall I entered the office and have been there ever since, but as early as 1895 I conducted the prosecution of this class of cases doing the work at home.

Q. In this claim of Kidd against the United States I wish you would state whether in your capacity in your father's office
117 whatever it was, you had occasion at any time to handle the papers relating to that claim? A. I have attended to the entire work in the Kidd case as far as concerned the work at this end of the line since 1895 or very shortly thereafter with the exception of arguing the case on the question of loyalty. I had not then been admitted to practice, while I prepared all the briefs and the testimony was secured through my instructions, I could not appear before the Court. With that exception I have done everything.

Q. The main fact I want to get at is whether you became familiar with the papers that were on file in your father's office in relation to that claim? A. Perfectly familiar.

Q. I wish you would state whether any contract for a fee between Kidd or any of the heirs or representatives of Kidd with Edmunds

for a fee in that case came under your observation in your father's office in handling the papers. A. I never found any such agreement although I personally made a very thorough search.

Q. For what? A. For an agreement as to fee in the case with any body.

Q. And found none? A. Found none.

Q. When did it first come to your knowledge that it was claimed that Edmunds had a contract for a fee with Kidd or his representatives? A. As near as I can state now, I should say something over a year ago. It was after the case was allowed.

118 Q. You mean the case was allowed by the Court of Claims? A. Yes.

Q. Do you remember whether it was before or after the time the appropriation was made for the payment of it? A. It must have been just about that time.

Q. Have you that contract here? A. Yes.

Witness produces the contract and hands same to the counsel.

Q. I would like to know whether you had any correspondence with William A. Montgomery the man who was paid the 15 per cent. out of the claim on account of fee in the case?

Mr. TUCKER: I object on the ground that it opens up a line of testimony in this case which has been thoroughly covered in the testimony heretofore taken and also on the ground that it is irrelevant and immaterial what correspondence the witness as an employé of her father may have had with Mr. Montgomery.

Mr. TUCKER: I object to this testimony relating to this Kidd claim on the ground that the testimony has been closed and also by reason of the express contract between Moyers and Edmunds it is immaterial and irrelevant what if any arrangement Moyers made with Montgomery as local counsel.

Mr. Tucker admits the execution of the contract and the genuineness of the signatures.

119 Q. In whose handwriting is the written part of that contract, with the exception of "to wit 35 per cent. to said Moyers and 15 per cent. to W. A. Montgomery." A. In my handwriting.

Q. When and where did you do that writing? A. I did that at my home at 1100 East Capitol Street.

Q. What did you do with the paper after you had filled it out in that way? A. I sent it to W. A. Montgomery for the purpose of getting the parties in interest at that time to sign the same.

Q. When did you next see it, when was it returned to you? A. Can't say positively, probably in the course of a week or two.

Q. When it came back to you in what condition was it? A. In its present condition.

Q. When you sent it away it was not signed by Susan Kidd or M. O. King, it did not have any attesting witness, nor that interlineation "to wit 35 per cent. to said Moyers and 15 per cent. to W. A. Montgomery?" A. No.

Q. When it was returned it was in the form it is now? A. Yes.

Q. I would like to know whether prior to the time you sent that you had reached any understanding between you and Mr. Montgomery that he was to have any share in the fee, if so what
120 share? A. I am very positive that no special agreement was ever entered into with Colonel Montgomery relative to a fee in this particular case.

Q. Is my understanding correct that prior to the time you sent that paper it was agreed between you that he was to receive a share of the fee? A. There was a general understanding with Colonel Montgomery providing that he was to receive a certain share in all cases that he handled at his end of the line.

Q. What I want to know particularly is whether that understanding had been reached prior to the time you sent this paper down there? A. Yes.

Q. How long prior? A. In 1895.

Mr. TUCKER: It is to be understood that my general objection applies to this line of testimony without repetition of the objection each time.

By Mr. TUCKER:

Q. When did you take charge of this Kidd claim? A. I think it was as early as 1895, or very shortly thereafter.

Q. Are you familiar with the Court of Claims papers and records. A. I have been through them time and time again.

Q. Perfectly familiar? A. Yes.

Q. Were you the attorney of record in the case in the
121 Court of Claims? A. No, though my name appears in the findings of the Court.

Q. Who made the arrangement with Montgomery that he was to receive 15 per cent. of the appropriation you or your father? A. There was no special agreement that I know of in regard to this particular case as I said before, there was a general agreement entered into with Colonel Montgomery as early as 1895.

Q. This general agreement gave Colonel Montgomery how much fee? A. The agreement as first made with Colonel Montgomery gave him 10 per cent. but later he objected to receiving so small amount in any case as it did not actually compensate him for his services rendered in gathering up testimony so the later agreement provided for 15 per cent. in such cases. I know of this because I corresponded with Mr. Montgomery relative to the matter myself.

Q. When was this agreement for 15 per cent. entered into? A. I don't know.

Q. I observe that the date of this contract is November 20, 1900, was that the date of the first agreement made with Montgomery that he should receive 15 per cent. of the Kidd claim? A. That was the first agreement that particularly specified this case that I know of, though I considered it covered by the prior arrangement made in 1895.

Q. The 1895 arrangement provided for the payment of 10 per

cent.? A. Yes, but very shortly after that, I think he in-
122 sisted on the larger per cent. in all cases he handled.

Q. When this agreement of November 20, 1900 was made with Montgomery all of the testimony in the case had been taken had it not? A. Yes.

Q. So far as Montgomery was concerned he had done all of the work required of him? A. Practically all.

Q. What else did there remain for him to do? A. There is always more or less work for a local attorney in gathering up the various ends in the case, even after the case is allowed by the Court.

Q. Why didn't you go down to Mississippi and take the testimony in this case? A. Because I was not qualified at the time to take it and furthermore if I had been I would have had to make several trips, then could not have located the witness, all I could have done would have been to take their evidence after they had been secured by Mr. Montgomery.

Q. Did not your father frequently employ local counsel in Mississippi and in other southern states at seven and ten dollars per day for the purpose of taking testimony? A. I know of no such arrangements made between my father and local attorneys.

Q. Never heard of any such arrangements? A. As far as I know local attorneys have never worked on a contingent fee.
123 Q. Did you ever hear of the claim of James A. Mahan in which your father employed Mr. Jordan as local attorney and paid him seven dollars and his hotel and travelling expenses? A. No, that must have been a case that was prosecuted before I went into the office.

Mr. TUCKER: I refer to pages 32, 33, 34, 37 and 38 of the testimony of Colonel Moyers under this reference.

WITNESS: I want to state as a general rule the local attorneys get much greater per cent. than in the present case. They generally get 25 per cent. for doing exactly the same work that Montgomery did in this case, he always handled cases at a very reasonable per cent. There is another thing I want to state about this agreement and that is that the agreement shows I endeavored to secure a fee of 50 per cent., being unable to find any other in my father's office or files. But Mr. Montgomery wrote that the claimant having been to some expense themselves in the prosecution of the case, they thought that Mr. Montgomery's fees should come out of the 50 per cent. leaving only 35 per cent. to my father. That is why I judge the agreement was changed.

By Mr. TUCKER:

Q. Why did you not look up the Edmunds fee contract? A. I looked for any contract I might find with any body, but could find none.

Q. You knew did you not that Mr. Edmunds was entered as joint attorney of record in this case in the Court of Claims?
124 A. No, I did not know that Mr. Edmunds had been entered in the case or I would not have done the work.

Q. You said you were perfectly familiar with the record and paper in the Court of Claims in this case, and it appears from those records and papers that there is recorded, filed in the Court of Claims a joint entry of appearance of your father and Mr. Edmunds. Why, being familiar with these papers did not you know that Edmunds was entered in this case? A. I had no occasion to pay any attention to the record outside of the evidence and for the further reason if I had noticed such an entry of appearance I would have paid no attention to it for the reason that in all these claims prosecuted before the Southern Claims Commission and later before the Court of Claims, it is not uncommon for various powers of attorney to appear among the papers as so many attorneys have had charge of the papers.

JUDGE COLE: I offer this contract dated November 20, 1900 purporting to be a contract on the part of Susan Kidd and M. O. King to pay a fee of 50 per cent. of the amount collected 35 per cent. to Gilbert Moyers and 15 per cent. to W. A. Montgomery.

Mr. TUCKER: I object on the ground heretofore stated.

Adjourned to Saturday, October 31, at 10 A. M.

125 *Exceptions of Defendants to Report of Auditor.*

Filed February 3, 1904.

In the Supreme Court of the District of Columbia.

Equity. No. 20802.

HORACE S. CUMMINGS, Administrator of George B. Edmunds, Deceased,

vs.

CHARLES F. CONSAUL and IDA M. MOYERS, Administrators of Gilbert Moyers, Deceased.

Exceptions of the Defendants to the Report of the Auditor, Filed in this Cause on the 5th Day of January, 1904.

And now come the defendants by their solicitor and except to the Report of the Auditor filed herein on the 5th day of January 1904, and for grounds of exceptions thereto say that the Auditor erred in the following particulars, to wit:

1st. In finding or assuming that there was a partnership between George B. Edmunds, deceased, and Gilbert Moyers, deceased, in relation to the claims and matters embraced in said Report.

2nd. In finding that the claim of Ernest Neill, administrator of Joseph Egner, was embraced in said alleged partnership agreement.

126 3rd. In finding that the claim of William Goddard was embraced in said alleged partnership agreement.

4th. In finding that the claim of Edward M Nace, administrator

of John M. Nace was embraced in said alleged partnership agreement.

5th. In finding that the claim of Solomon Beery was embraced in said alleged partnership agreement.

6th. In finding that the claim of John Young was embraced in said alleged partnership agreement.

7th. In finding that the claim of R. H. Rue, administrator of Edward Alston, was embraced in said alleged partnership agreement.

8th. In finding that the claim of the executors of Thomas Kidd was embraced in said alleged partnership agreement.

9th. In finding that the claim of Isaiah B. Beans was embraced in said alleged partnership agreement.

10th. In finding that the claim of John W. Fletcher was embraced in said alleged partnership agreement.

11th. In finding that the sum of $2019.00, paid to W. A. Montgomery part of the counsel fee in the claim of Thomas Kidd's executors, should be wholly charged to said Gilbert Moyers' share of that fee.

12th. In not charging the sum of $2019.00, paid to the said W. A. Montgomery, against the gross fee of $6730 in the said
127 Kidd claim.

13th. In not deducting the said sum of $2019.00 from the sum of $6730, the gross fee in the Kidd claim; and dividing the residue between the said complainant and defendants.

14th. In finding that the employment of the said W. A. Montgomery to perform the services performed by him was not necessary under the circumstances of the case.

15th. In assuming to establish the reasonableness or unreasonableness of the contingent fee to be paid to said Montgomery by comparison with cash *per diem* fee paid to local attorneys in similar cases.

16th. In assuming to measure the reasonable value of the services of said Montgomery by the volume of testimony taken by him, regardless of the number of witnesses secured and examined by him.

17th. In finding that the said sum of $2019.00 was in excess of a reasonable compensation for the said Montgomery under the circumstances of the case for the services rendered by him.

18th. In charging the sum of $320.00, paid to O. I. Thomas out of the fee in the claim of the executrices of Isaiah B. Beans, wholly to the share of the said Gilbert Moyers instead of deducting the same from the total fee of $640.00, and dividing the balance less other expenses between the said complainant and defendants as
128 should have been done.

19th. In finding that the services of the said O. I. Thomas were unnecessary under the circumstances.

20th. In finding that the share of the fee paid to the said O. I. Thomas was not reasonable.

21st. In rejecting evidence offered by the defendant Gilbert Moyers in his life time tending to prove that he was entitled to allowances for expenditures and for special services rendered by him in the prosecution of the claims mentioned in said report rendered

necessary and proper by the failure of the said Edmunds to render any services in his lifetime.

22nd. In refusing to admit evidence offered by the said Gilbert Moyers in his lifetime to prove that he was entitled to allowances for expenses and for special services rendered by him after the death of the said Edmunds in the prosecution of the claims embraced in said report.

23rd. In refusing to admit evidence showing that the said Gilbert Moyers was entitled to allowances for expenses paid by him in the prosecution of other claims embraced in the alleged partnership agreement.

24th. In allowing the Receivers a commission of ten per centum of fund passing through their hands, said allowance being excessive and unreasonable.

25th. In allowing said receivers, both of whom are mem-
129 bers of the bar of this Honorable Court, to employ legal services in the matter of receivership fund and to charge the amount paid for such service to the receivership fund.

COLE & DONALDSON,
Sol'rs for Defendants.

Mandate.

Filed June 11, 1904.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable the Justices of the Supreme Court of the District of Columbia, Greeting:

[SEAL.]

Whereas, lately in the Supreme Court of the District of Columbia, before you or some of you, in a cause between Horace S. Cummings, Administrator of the Estate of George B. Edmonds, deceased, complainant, and Gilbert Moyers, defendant, Equity No. 20,802, wherein the order of the said Supreme Court entered in said cause on the 5th day of February, A. D. 1903, is in the following words, viz:

"This cause having come on to be heard upon the motions of the defendant to remand the cause to the auditor of this
130 court and for leave to file a cross bill herein, and upon the exceptions of the defendant to the report of the said auditor, which report was filed on the 20th day of August, 1902, the exceptions of the complainant to said report having been withdrawn) and after argument by the solicitors for the respective parties, it is, by the court, this 5th day of February, A. D. 1903, adjudged, ordered and decreed as follows, to wit:

1. That said motions of the defendant be, and they are hereby, over-ruled.

2. That the exception of said defendant to said report relating

to the claim of R. M. Johnson, administrator of Samuel Heard, which the auditor found to be a partnership claim and in which he further found that the defendant collected a fee due said partnership of $1,052.50, of which one-half was payable to the complainant, be, and the same is hereby sustained.

3. That each and every of the defendant's other exceptions to the said report be, and the same are hereby overruled, and that the said report be, and the same is hereby in all things, except as to the finding in the matter of said claim of R. M. Johnson, administrator of Samuel Heard, deceased, ratified and confirmed.

4. That the defendant be, and he is hereby directed to pay within ten days after the passage of this order to the complainant,
131 as administrator of the estate of George B. Edmonds, deceased, the sum of ten thousand and seventy-four dollars and seventy-nine cents ($10,074.79), with interest there on at the rate of six per centum per annum from September 16, 1899, until paid, and the costs of this suit to be taxed by the clerk of this court; the complainant to have execution therefor as at law, together with such other remedy or remedies for the enforcement of this decree as the law provides for.

5. That this cause be, and the same is hereby retained, and the right saved and reserved to the complainant to apply to this court from time to time for an order or orders for the payment of such other and further sums of money as he may show to have come into the hands of the defendant as surviving partner of the partnership heretofore adjudged to have existed between the said defendant and the said George B. Edmonds, deceased, or into the hands of the receivers heretofore appointed herein, or which may hereafter come into the hands of said defendant or said receivers, or either of them, and which may be due to the complainant as administrator of the defendant's said deceased partner, George B. Edmonds, by reason of the existence of said partnership.

A. B. HAGNER,
Asso. Justice."

and thereafter, to wit: on the 10th day of July, A. D., 1903, the following order appears of record.

132 "This day came Charles F. Consaul and Ida M. Moyers and suggested to the court that since the last order was made in this cause the defendant Gilbert Moyers has departed this life. Thereupon, it appearing to the court that the said Charles F. Consaul and Ida M. Moyers have been appointed by this court, holding a probate court, as administrators of the estate of the said Gilbert Moyers, and by consent of the Counsel for the plaintiff, it is this 10th day of July 1903, ordered, that the said Charles F. Consaul and Ida M. Moyers, as administrators aforesaid, be substituted as defendants in this cause in lieu of the said Gilbert Moyers.

And thereupon, by consent of the counsel for the respective parties to this suit, it is further ordered that the time for the defendant to file a transcript of the record in this cause in the Court of Appeals

upon the appeal of the said Gilbert Moyers heretofore entered herein be, and the same is hereby extended to the 1st day of October next.

THOS. H. ANDERSON, *Justice.*"

as by the inspection of the transcript of the record of the said Supreme Court, which was brought into the Court of Appeals of the District of Columbia by virtue of an appeal, agreeably to the act of Congress in such case made and provided, fully and at large
133 appears.

And whereas, in the present term of April in the year of our Lord one thousand nine hundred and four, the said cause came on to be heard before the said Court of Appeals on the said transcript of record, and was argued by counsel:

On consideration whereof, it is now here ordered, adjudged and decreed by this Court that the decree of the said Supreme Court in this cause be, and the same is hereby, reversed; each party will be taxed with one half of the costs incurred on this appeal, and that the said defendants Charles F. Consaul and Ida M. Moyers, Administrators of Gilbert Moyers, deceased, recover against the said complainant Two Hundred and forty dollars and eighty five cents for their costs herein expended and have execution therefor.

And it is further ordered that this cause be, and the same is hereby remanded to the said Supreme Court with direction to refer the account to the Auditor that he may ascertain the credits to which Moyers is entitled on account of the expenses incurred in the unsuccessful cases, and the interest upon the $1470. advanced by him, at the rate of six per cent. per annum from January 1, 1893 to September 16, 1899, and with further direction to take such proceedings upon the Auditor's report as shall not be inconsistent with the opinion of this Court.

MAY 24, 1904.

You, therefore, are hereby commanded that such execution and further proceedings be had in said cause, in conformity with the opinion and decree of this Court as according to right and
134 justice and the laws of the United States ought to be had, the said appeal notwithstanding.

Witness the Honorable Richard H. Alvey, Chief Justice of said Court of Appeals, the 11th day of June in the year of our Lord one thousand nine hundred and four.

HENRY W. HODGES,
Clerk of the Court of Appeals of the District of Columbia.

Costs of Defendants:

½ Clerk	$26.10
½ Printing Record	$214.75
	$240.85

Motion for Order of Reference to Auditor.

Filed September 24, 1904.

In the Supreme Court of the District of Columbia.

In Equity. No. 20802.

HORACE S. CUMMINGS, Administrator, Complainant,
vs.
CHAS. F. CONSAUL ET AL., Administrators, Defendants.

Comes now the complainant in the above entitled cause and moves the Court for an order referring said cause to the auditor of this Court in accordance with the mandate of the Court of Appeals heretofore filed.

CHAS. COWLES TUCKER,
Solicitor for Complainant.

Charles C. Cole, solicitor for defendants:

Please take notice that I will on the 28th day of Septem-
135 ber, 1904, at 10 o'clock A. M., or as soon thereafter as counsel can be heard, bring the above motion up for hearing before Mr. Chief Justice Clabaugh of said Court.

CHAS. COWLES TUCKER,
Attorney for Complainant.

Petition for Leave to Introduce Further Evidence, &c.

In the Supreme Court of the District of Columbia.

Equity. No. 20802.

HORACE S. CUMMINGS, Administrator of the Estate of George B. Edmonds, Deceased,
vs.
CHARLES F. CONSAUL and IDA M. MOYERS, Administrators of the Estate of Gilbert Moyers, Deceased.

Your petitioners, Charles F. Consaul and Ida M. Moyers, administrators of the estate of Gilbert Moyers, deceased, respectfully show to the court as follows:

That on the 16th day of September, 1899, the complainant in the above entitled cause filed in this court his bill against Gilbert Moyers, then in this life, but since deceased, alleging that in the lifetime of the said Edmonds on the 6th day of February, 1888, the said Moyers and Edmonds entered into the following agreement, to wit:

136 "*Agreement.*

"Know all men by these presents, in duplicate, that the undersigned, attorneys of Washington, D. C., are special partners in the prosecution of the cases named in the schedule hereto attached now pending before the United States Court of Claims and the Congress of the United States, the fee agreed to be paid by the client in each case being the per centum of whatever may be recovered as is stated herein, and the agreement between the undersigned being that each shall have half of said fees and that each shall pay one-half of the expenses incident to the prosecution of same, which expense is not to exceed two and a half per cent. of the amount that may be allowed upon said claim.

"And it is hereby agreed and understood that the said Gilbert Moyers shall represent and be associated with me in the prosecution of said claims before the Court of Claims and the Congress of the United States as joint attorney of record.

"It is hereby understood and agreed that the undersigned Gilbert Moyers is to advance the expenses incident to the prosecution of said claims.

Witness our hands this 6th day of February, 1888.

(Signed) GILBERT MOYERS.
(Signed) GEO. B. EDMONDS."

That the claims mentioned in said agreement were prosecuted mainly by the said Moyers, during the joint lives of himself and the said Edmonds, and that after the death of the said Edmonds the said Moyers succeeded in establishing and receiving payment of a large number of the claims therein referred to, and collected the fees therefrom and claiming also that the said complainant was entitled to receive from the said Moyers one-half of the sum realized on account of said fees, and was entitled to an accounting as to the amounts so received by the said Moyers and praying, amongst other things, for said accounting and a decree for the amount found to be due.

137 The defendant, Gilbert Moyers, then in this life, in his answer to said bill, while admitting the execution of said contract, denied the right to an accounting upon the ground alleged by him that he had subsequently to the making of said agreement purchased from the said Edmonds all his interest in said claims. The complainant filed a general replication to said answer. The bill, answer and replication in said cause are hereby referred to and made a part of this petition, and asked to be read in connection herewith. Considerable evidence was taken upon the issue joined, and on the 31st day of June, 1900, this court passed an interlocutory decree in said cause adjudicating that a special partnership existed between the said Edmonds and Moyers in relation to the claims mentioned in said contract; that no valid and binding purchase was made by said Moyers of the interest of said Edmonds in said claims, and that the complainant in said cause was entitled to an accounting of the dealings and transactions under said contract, and thereupon

referred the case to the Auditor of the Court to state the account between the parties. Considerable testimony was taken before the Auditor in said reference mainly upon the question of what claims were intended to be included in the alleged partnership agreement. The complainant contended that the claims referred to in said agreement were specified in a schedule which, he alleged, was attached to the contract at the time of the execution thereof, and was understood by the parties at that time as being the claims referred to in the agreement. There was a schedule attached to the agreement filed with the bill. The agreement was executed in duplicate, each of the said Edmonds and Moyers holding one. The dupli-
138 cate held by the said Moyers was produced during the proceedings in the cause and there was no schedule of claims attached to that. The schedule or list of claims was shown to be in the handwriting of Edmonds. It was not signed by either of the parties, and there was nothing upon the face of it to indicate that it was attached to said contract at the time of the execution thereof, or that Moyers had ever seen it, nor was any evidence given tending to prove either of those facts. One of the controversies before the Auditor was what, if any, weight should be attached to this schedule as evidence. The claimant contended that the Auditor should receive it as conclusive evidence that the claims therein mentioned were those specified in the contract, while the defendant contended that it was entitled to no weight as evidence, and that the Auditor should determine the question of what claims were intended to be embraced in said contract wholly from other evidence. The Auditor appears to have taken a middle ground in his report. He did not consider it as conclusive evidence because there were a number of claims in the schedule which had been successfully prosecuted and fees collected, which were not charged against Moyers in the account.

But it is also apparent that the Auditor did give the schedule considerable weight as evidence, as he charged against Moyers in the accounting fees which he had collected in some of the cases mentioned in said schedule, and in relation to which the complainant produced no evidence that they were embraced in the contract other than the schedule itself. The Auditor, in his report, speaking of this schedule, uses this language:

139 "In the condition of the controversy over the identity of the schedule referred to in the agreement, and of the proof furnished as relevant to that issue, I shall not undertake to determine for the purpose of this reference that controversy as a whole, and will limit my examination and findings to the specific cases which the complainant set forth in his bill, or in the proceedings had as the subject of this accounting."

The Auditor in and by his report found a balance due the complainant of $10,601.04. Exceptions were filed by both parties to that report, and on the 5th day of February, 1903, the cause was finally heard in this case upon that report. One of the defendant's exceptions to the report was sustained and all others were overruled, and the court passed a decree in favor of the complainant against the defendant for the sum of $10074.79, with interest thereon from

the 16th day of September, 1899, until paid, and the costs of the suit. The court also in that decree provided that the cause should be retained and the right reserved to the complainant to apply to the court from time to time for orders for the payment of such other and further sums as he might be able to show to have come into the hands of the defendant since the making of the Auditor's report. From this decree the defendant, in his lifetime, appealed to the Court of Appeals of the District of Columbia, and the cause was pending in that court when on the 13th day of June, 1903, the said Gilbert Moyers departed this life, and thereafter your petitioners were appointed his administrators and entered their appearance in said cause in this court, and in the said Court of Appeals for the purpose of defending the same. On the — day of May, 1904,
140 the said Court of Appeals reversed the said decree of this court of the 5th day of February, 1903, and sent its mandate to this court and the same is hereby referred to and asked to be read as part hereof.

Your petitioners further show that after the passage of the decree by this court on the 5th day of February, 1903, and while the said cause was pending upon appeal in the said Court of Appeals, upon motion of the complainant, this court, to wit, on the — day of —— 1903, referred this case again to the Auditor for the purpose of stating a further account between the complainant and defendant as to the fees which had been collected from the United States by the receivers of this Court appointed in this cause, for the purpose of receiving the same, in relation to other claims mentioned in said schedule, which had been successfully prosecuted by said Moyers, which the complainant claimed were partnership cases, and as to many of which defendant denied that they were partnership cases or that the said Edmonds was entitled to any interest in them, and such proceedings were had upon that reference that the Auditor made a report in relation thereto, and your petitioners have filed exceptions to said report, and the questions arising upon said exceptions are now pending in this court and undetermined. Said report and exceptions are referred to and asked to be considered a part hereof. In that reference also it is apparent from the Auditor's report that he gave weight and credit to said schedule as evidence in favor of the complainant as tending to establish that the claims therein mentioned were intended by the parties to be included in the said partnership agreement.

141 Your petitioners further show that after the Auditor had made his report, last above referred to, and while this cause was pending in said Court of Appeals, and after it had been argued in said Court, but before the Court had announced its opinion, the petitioners accidentally discovered, in a place where they would not have expected to find it, a letter dated at the National Soldiers' Home, Virginia, December 17th, 1889, directed to the said Gilbert Moyers, and signed by George B. Edmonds, which fully establishes that at the time of the execution of the contract mentioned in the bill in this cause, no schedule of claims were attached to it, and that no schedule of such claims had been furnished by said Edmunds

to the said Moyers until the date last aforesaid. A copy of said letter is attached hereto and asked to be read in connection herewith and as part hereof. The original thereof has been exhibited to counsel for the complainant and will be exhibited to him and to the court at any time hereafter when requested. Defendants also filed herewith an affidavit of the petitioner, Ida M. Moyers, setting forth the circumstances under which said letter was discovered.

Petitioners further show that they were intimately acquainted with the said Gilbert Moyers from about the time of the making of said contract between him and the said Edmunds to the time of his death; that they know that he understood and supposed that the money which he had paid to the said Edmonds from the time of the making of the said contract up until some time in the year 1892 had wholly extinguished the claim of the said Edmunds
142 therein; that he supposed that Edmonds so understood it, and he did not for that reason preserve his papers in relation thereto, as he otherwise would have done; that in this connection, they respectfully call the attention of the court to the fact that the said Moyers did, during the time aforesaid, pay to the said Edmonds the sum of $1470.00 on account of his very contingent interest in said claims for the purpose of showing that such a belief upon the part of the said Moyers was not an unreasonable one. Your petitioners also show that during the greater part of the time, after the institution of this suit, the said Moyers was in poor health, and was frequently too ill to attend to business at all, and during all the time from the institution of this suit to the time of his death, he was very much engaged in attempting to collect fees that were due him from claimants whose claims he had successfully prosecuted, and some of whom were endeavoring to evade the payment of his fees, so that his time when able to attend to business was crowded full of onerous and perplexing duties; that he had a habit of taking papers from his office to his residence and putting them away in the basement, generally selecting for such disposal papers which he deemed to be of little or no value.

Petitioners further show that after the discovery of said letter, as hereinbefore set forth, and after the Court of Appeals had announced its opinion in this case reversing said decree, but before the mandate of said court was sent down to this court, they filed their petition in the said Court of Appeals setting forth, amongst other things, the discovery of said letter, and alleging that
143 under the facts of the case the said Moyers was entitled to an allowance for expenses paid by him in the successful case, and also for those paid in pending cases, and praying said court, amongst other things, to enlarge its mandate so as to direct the said Auditor to permit, on the re-reference to him, said letter to be given in evidence, and to allow the expenses in the claims pending at the time of said Moyer's death, and the Chief Justice of said Court endorsed upon said petition the following:

"Motion to Modify and Enlarge the Decree. The Motion is denied.

"Questions relating to claims that may have been referred to the

Auditor under the provision of the decree appealed from retaining the cause for their consideration and determination are not before us on this appeal and hence no order can be made governing their disposition or allowance.

"For this reason there is nothing in the decree of this court to preclude a reference or re-reference of such claims to the Auditor if the Justice presiding in the Equity Court shall deem it necessary or proper so to do.

June 8, 1904.

By the Court,

(Signed) R. H. ALVEY,
Ch. Justice."

In view of the premises, your petitioners pray:

1st. That the matters arising upon this petition and the order to be entered in this cause in pursuance of the said mandate of the Court of Appeals, and the exceptions of petitioners, now pending, to the Auditor's last report in this cause, may be heard together, and that upon such hearing the said exceptions may be sustained, and that upon the re-reference to be made to the Auditor he may be directed to receive in evidence the letter aforesaid, together
144 with any other material evidence bearing upon the question of what claims were intended by the parties to be included in the agreement mentioned in the bill in this cause, and that the court will allow all expenses paid by said Moyers in the prosecution of all cases embraced in said agreement which were pending and undetermined at the time of his death.

COLE & DONALDSON,
Solicitors for Petitioners.

DISTRICT OF COLUMBIA, *To wit:*

Ida M. Moyers, being first duly sworn, deposes and says that she is one of the petitioners named in the foregoing petition by her subscribed; that she has read said petition and knows the contents thereof, and that the statements therein made of her own knowledge are true, and those therein made upon information and belief, she believes to be true.

IDA M. MOYERS.

Subscribed and sworn to before me this 30th day of September, 1904.

WALTER F. DONALDSON,
[NOTARIAL SEAL.] *Notary Public, D. C.*

DISTRICT OF COLUMBIA, *To wit:*

Ida M. Moyers, being duly sworn, says upon oath that she is the daughter of the late Gilbert Moyers, deceased, and one of his administrators and one of the appellants in the above entitled
145 cause; that during all the time since the death of her said father she has devoted all the time she could spare from her

other duties in going over his papers, of which there is a large mass, for the purpose of selecting and preserving therefrom all that she might find of value or use; that she lived in the same house with her father to the time of his death; that during the last ten or twelve years of his life there was removed from his office to his residence from time to time and placed in the cellar thereof a large mass of papers, which had accumulated in his office in the transaction of his business; that some of these papers were in pigeon holes in wooden cases; others tied up in bundles, and still others loose; that they consist of letters, receipts, checks and other papers connected with his business, and in all there are several thousands of them; that a few days after the argument of this case in the Court of Appeals in May last, while she was going over some of these papers in the manner and for the purpose aforesaid, she discovered a letter purporting to be from George B. Edmonds to her father bearing date at the Soldiers' Home, Hampton, Virginia, the 17th day of December, 1889, in relation to the claims mentioned in this suit; that she has become familiar with the handwriting of the said Edmonds by examining frequently from time to time, papers filed in this cause, proved or admitted to be in his handwriting, and she verily believes that said letter is the genuine handwriting of the said George B. Edmonds. A correct copy of said letter is appended hereto.

146 Affiant further says that at the time of the discovery by her of the said letter she had carefully gone over about one-third of the papers aforesaid, but since that time she has looked through all the residue of them for the purpose of ascertaining whether any schedule of said claims or any other letter from said Edmonds was amongst them, and while she did not make a critical examination of each paper she looked with sufficient care to enable her to state that there is and was no schedule or list of said claims or any of them amongst them. That she has also searched amongst her father's papers left in his office and there is no such list or schedule there. That she has searched through her father's letter press copy books covering the time of several months subsequent to the date of said letter and she finds no letter from said Moyers to said Edmonds in reply to the one herein referred to.

Affiant further says that the last three or four years of her father's life, and especially during all the time after the institution of this suit against him, he was in very delicate health, sick and unable to attend to business for a considerable portion of the time, and for that reason and because of other business complications, unable to give that attention to his defense of this suit, which he otherwise undoubtedly would have given it.

IDA M. MOYERS.

Subscribed and sworn to before me this 30th day of September, A. D., 1904.

WALTER F. DONALDSON,
Notary Public, D. C.

[SEAL.]

147 (*Copy of Letter.*)

NATIONAL SOLDIERS' HOME, VA., *Dec.* 17, 1889.

Gilbert Moyers, Esq.

SIR: Today I will send you a list of my cases, and the number of the cases set down on the margin. Last winter I sent every case to Gen. Stone, except five or eight cases in Gen. Lee's district and one Peter Clark in another Virginia district, and I expected they all would be sent down by Gen. Stone committee's, but for some reason they were not sent down as I understood him they would be last winter, and the same the year before.

Some of these cases have other attorneys in them; but I did not know it at the time I took the cases, and I think there was no other attorney at the time I took them.

Now if the order of the court amounts to anything, they could not discharge me without paying me. And I desire every — tested, and if they will pay me, then they can hire other attorneys. One case is the Febrey case, another case is Loftus Allen. In this last case my power of attorney was executed first. Mr. Dye filed his power of attorney before I did mine, but my power of attorney was executed before his was. I had filed in Congress to have the case sent to the Court of Claims.

I filed with the Clerk my power of attorney and he marked my name down as attorney, but I see my name is scratched out,
148 by whom I do not know.

I inclose a letter from a Mr. Bell, and I think it is the same name down on the list I send you.

Very respectfully,

(Signed) GEO. B. EDMONDS.

In the Supreme Court of the District of Columbia.

Equity. No. 20802.

HORACE S. CUMMINGS, Administrator of the Estate of George B. Edmonds, Deceased,

vs.

CHARLES F. CONSAUL and IDA M. MOYERS, Administrators of the Estate of Gilbert Moyers, Deceased.

Now come the defendants, Charles F. Consaul and Ida M. Moyers, Administrators of the Estate of Gilbert Moyers, deceased, by their attorneys, Cole & Donaldson, and move the court for leave to file the foregoing petition in the above entitled cause.

COLE & DONALDSON,
Attorneys for Defendants.

To C. C. Tucker, attorney for the complainant.

SIR: Take notice that on the 4th day of October next, at ten o'clock in the forenoon, or as soon thereafter as counsel can be heard,

the foregoing motion and petition will be presented to the
149 court and its action thereon requested.

COLE & DONALDSON,
Attorneys for Defendants.

Service of copy of above motion and petition acknowledged this 30th day of September, 1904.

CHAS. COWLES TUCKER,
Attorneys for the Complainant.

Order Granting Motion of September 24, 1904, &c.

Filed January 21, 1905.

In the Supreme Court of the District of Columbia.

No. 20802.

HORACE S. CUMMINGS, Administrator of George B. Edmonds, Deceased, Complainant,
vs.
CHARLES F. CONSAUL ET AL., Administrators of Gilbert Moyers, Deceased, Defendants.

Upon consideration of the motion of the complainant filed September 24th, 1904, to refer this cause to the Auditor in obedience to the mandates of the Court of Appeals; also of the petition of the defendants tendered herein for leave to introduce certain alleged newly discovered evidence; and also of the exceptions of the defendants filed February 8th, 1904, to the Auditor's report filed February 5th, 1904; and also of the report of the receivers filed on the 14th day of May, 1903, relative to the claim of Joel C. Johnson;
150 and after argument by counsel for the respective parties, it is by the Court this 21st day of January, A. D., 1905, ordered, as follows:—

1. That complainant's said motion filed September 24th, 1904, be granted as hereinafter provided for.

2. That leave is hereby granted to file the defendants' said petition.

3. That so much of said last mentioned petition as prays that this cause be re-referred to the Auditor with directions to him to consider alleged newly discovered evidence mentioned therein relating to the schedule attached to the partnership agreement between the intestates of the complainant and defendants, be, and the same is hereby denied.

4. That so much of said petition as prays for reference of this cause to the Auditor to ascertain and report the credits to which the defendants are entitled on account of expenses incurred by their intestate in pending partnership claims, be, and the same is hereby granted as hereinafter provided for.

5. That the defendants' second and third exceptions to the Auditor's report filed February 5th, 1904, to the effect that the Auditor erred in finding that the claims of O'Neill, administrator of Egner and William Goddard were embraced in the partnership agreement, be, and the same are hereby overruled.

151 6. That the defendants' exceptions to the Auditor's report numbered from eleven to sixteen, both inclusive, and relating to the claim of Thomas Kidd's executors, in so far as they are directed to the action of the Auditor in finding that the sum of $2019 paid to W. A. Montgomery, Esquire, should be wholly charged, and charging the same against the share of the defendants' intestate of the attorney's fee in that claim, be, and they are hereby sustained.

7. That so much of the defendants' eighteenth, nineteenth and twentieth exceptions to said last mentioned report as are directed to the action of the Auditor in charging the share of the defendants' intestate of the fee in the claim of the executrices of Isaiah Beans with the sum of $320 paid to O. I. Thomas out of said fee, be and the same is hereby sustained.

8. That all of the remaining exceptions to said last mentioned report be and the same are hereby overruled, all of said last mentioned exceptions having been abandoned by the defendants in open Court.

9. That this cause be and the same is hereby recommitted to the Auditor with the following directions:—

(1) To ascertain the credits to which the defendants are entitled on account of the expenses incurred in the unsuccessful claims embraced in the partnership agreement between the defendants' intestate and the complainant's intestate, with interest thereon from the times of the payments thereof to September 16th, 1899,

152 and interest upon the $1470 advanced by the defendants' intestate to the complainant's intestate at the rate of six per centum per annum from January 1, 1893 to September 16th, 1899; and in re-stating the account the Auditor shall allow the defendants $240.85 costs recovered against the complainant in the Court of Appeals of this District.

(2) To ascertain and report to this Court, the credits to which the defendants are entitled on account of expenses paid by the defendants' intestate in the prosecution of all partnership claims pending at the time of his death with interest thereon from the time of such payments to the 16th day of September, 1899.

(3) To ascertain and report what sum or sums of money would be reasonable and proper to be allowed the defendants for and on account of the employment by their intestate of local attorneys in the claims of the executors of Thomas Kidd and in the claim of the executrices of Isaiah Beans and to allow said sum or sums to the defendants in the partnership accounting.

(4) To ascertain and report whether the claim of Joel C. Johnson, administrator of the estate of Richard W. Johnson mentioned in the receivers' report filed on the 14th day of May, 1903, was a

partnership claim and if so, to tax the partnership account with respect to any fee paid either of the partners on account thereof, showing how the same should be distributed.

153 (5) That the auditor shall make the report heretofore directed upon the evidence already in the record and such further legal evidence as may be taken by either party.

10. It is further ordered that the defendants shall have forty-five (45) days after the date of the presentation of this order to the Auditor to present their account and take testimony before him in support thereof; and that the complainants shall have thirty (30) days after the close of such testimony to take testimony in reply thereto; and that the defendants shall have fifteen days after the close of the complainant's testimony to take testimony rebuttal. Upon the expiration of said time, the testimony shall be closed, and the Auditor shall forthwith, or as soon as practicable thereafter, make his report to this Court, as hereinbefore directed.

THOS. H. ANDERSON, *Justice.*

O. K.
C. C. COLE.
C. C. TUCKER.

Order of Reference.

Filed November 7, 1905.

In the Supreme Court of the District of Columbia.

Equity. No. 20802, Doc. 47.

HORACE S. CUMMINGS, Adm'r of Geo. B. Edmonds,
vs.
CHARLES F. CONSAUL ET AL., Adm'rs of Gilbert Moyers.

Upon the petition of the complainant filed March 8th,
154 1905, the report of the receivers of the same date, and the answer of the defendants to the petition, and the rule to show cause, it is now, after due consideration, ordered that the matters involved in these pleadings be referred to the auditor to ascertain and report to the Court whether the three claims in question were in fact partnership claims, or what, if any, interest the partnership had in them, and if partnership claims, or if the partnership had any interest in them, to state the partnership account in respect to them; and leave is granted to the defendants to ascertain before the auditor any claim they may consider themselves to have for compensation for services in the prosecution of said claims in the Court of Claims after the death of their intestate, said compensation to be treated as a partnership expense.

Done this seventh day of November, nineteen hundred and five.

WENDELL P. STAFFORD, *Justice.*

155 *Auditor's Report.*

Filed May 1, 1906.

In the Supreme Court of the District of Columbia.

Equity. No. 20802.

HORACE S. CUMMINGS, Administrator,
vs.
CHARLES F. CONSAUL ET AL.

This cause is referred to me to ascertain and report as follows:

(1) The credits to which the defendants are entitled for expenses incurred by their intestate in the unsuccessful claims with interest thereon from the time of the payments thereof to September 16th, 1899, and interest upon the $1470 advanced by said intestate to the complainant's intestate from January 1st, 1893 to September 16th, 1899; together with an allowance to the defendants of $240.85 costs;

(2) The credits to which the defendants are entitled on account of expenses paid by the defendants' intestate in the prosecution of all partnership cases pending at the time of his death with interest to September 16, 1899;

(3) What sum or sums of money would be reasonable and proper to be allowed defendants for and on account of the employment by their intestate of local attorneys in the claim of the executors of Thomas Kidd and in the claim of the executrices of Isaiah Beans; and to allow said sum or sums to the defendants in the partnership accounting; and

156 (4) Whether the claim of Joel C. Johnson, administrator of the estate of Richard W. Johnson mentioned in the receivers' report filed on the 14th day of May, 1903, was a partnership claim and if so, to state the partnership account with respect to any fee paid either of the partners on account thereof, showing how the same should be distributed. After due notice I proceeded with the reference.

A considerable amount of testimony has been submitted in relation to the several matters included in the order of reference and on the part of the defendants in connection with the testimony of the witness Neubeck, an elaborate statement is filed purporting to be the result of an examination by the said witness, of the records in the Court of Claims, and the records of the office of the late Gilbert Moyers, so far as the same relate to the unsuccessful claims referred to in the order of reference. This statement is marked Exhibit R. G. D. No. 1 and includes the dismissed and pending claims.

Counsel for the complainant has filed statements admitting, in view of the directions of the order of reference, a considerable number of items contained in the exhibit, and other statements enumerat-

ing items which it is alleged are not sufficiently proven, and others which it is contended are not covered by the order of reference or by the opinion of the Court of Appeals.

The witness Neubeck includes in his statement charges for taking testimony, preparing and filing briefs on loyalty and on
157 merits of the claim, taking evidence of witnesses, traveling and other expenses of Gilbert Moyers, preparation and filing of motions and what are known as calls in the Court of Claims, the latter being calls upon the Government Departments for evidence affecting the particular claims. The statement also includes a charge for writing letters in relation to the claims, correspondence with the claimants and local attorneys and others. With reference to the papers filed in the Court of Claims in the nature of motions and calls including the entry of appearance and similar documents counsel for the complainant objects to the allowance of these on the ground that they are included in the term office expense which in the opinion of the Court of Appeals are to be excluded from allowance.

Counsel also objects to charge for preparing and filing calls, motions and like documents on the grounds that they are included in the duty assumed by Moyers and are documents either largely prepared by clerks in the office of Moyers or of such character as to permit of being prepared by such employees. The witness Neubeck testified to having made a personal and careful examination of the records of the Court of Claims in the matter of documents filed in that Court and of having made an accurate count of the contents of such papers to ascertain the number of words and folios for the purpose of applying the alleged ordinary rates of stenographers and typewriters for services in such cases. The witness Maul produced by the complainant who testified to making a similar examination of these records states that he obtained his
158 results by estimating the number of words, lines and folios contained in the several documents.

These two witnesses being unimpeached and creditable so far as their examination of the Court records are concerned, that of the witness Neubeck seems to be the most reliable and accurate and is adopted for the purpose of my report.

With reference to the information procured from the office dockets and records of Moyers the evidence is not so reliable many of the items being estimated, such as letters as to many of which the witness Neubeck had no personal knowledge or observation upon which to base his testimony. For such of the letters as appeared in the press-copies of the office the extent of their contents was readily ascertained and there the ordinary fees of stenographers and typewriters were again applied; but in the case of between five and six hundred letters there was only an entry in the office docket that a letter was written, in these cases the witness estimated the contents of the letter as equalling the cost of ten cents.

With reference to the issues presented by this claim and the objection, I am of the opinion that the services rendered by Moyers in the preparation and filing of documents such as calls and motions

in the Court of Claims was not intended by the Court of Appeals to be included in what are commonly known as office expenses, being services in form equal to filing of a petition or brief though not so elaborate or imposing the same extent of service upon the party preparing them. With reference to the letters written and mailed to the claimant, local attorneys and others related in some manner
159 to the cases, it may be perhaps reasonably asserted that work which was performed or could be performed by the employment and service of clerks come fairly within the meaning of office expenses and should not be allowed. Upon the evidence furnished, considering it notwithstanding its defects, as being the best proof now available, and construing the term office expenses as used by the Court of Appeals as not including the items contained in the account submitted by the defendants (excepting the letters) I have adopted that account in other respects under the first direction of the order of reference.

I desire to note especially that in submitting this account the defendants, as will be seen by their memoranda of argument, do not by making the said claim for credit, admit or concede that the cases mentioned in their account or exhibit are or were embraced in any alleged partnership agreement made by Gilbert Moyers with the complainants intestate.

By the original decree passed in this cause the Court adjudged that a special partnership existed between Edmunds and Moyers created by the agreement described in the fourth paragraph of the bill of complaint and that said partnership related to the prosecution of the claims mentioned and described in the schedule or list of claims which was therein referred to as attached to said partnership agreement. The order of reference contained in the same decree, directed the Auditor to take an account showing the moneys collected by either of the parties from time to time on ac-
160 count of said receivership agreement, to show the amount of fees received from the claimants and the sum or sums of money paid by Moyers to Edmunds on account of his interest in the partnership business. With the original bill a list was filed marked complainant's Exhibit No. 1 of cases which it was asserted in the bill were included in the schedule attached to the agreement and which were prosecuted by Moyers and the fees thereof collected by him. The defendants in answer deny that either of the cases enumerated in the said exhibit to the bill were among those attached to the partnership agreement with two exceptions.

In taking proof under that order of reference the complainants produced a document alleged to be a duplicate original of the partnership agreement and the attached list containing the names of the claimants in the handwriting of Edmunds. Moyers in testimony here first denied that any schedule of claims was attached to his duplicate of the agreement or that any schedule of cases was transferred by Edmunds to him or was furnished to him at the time of signing the contract, asserting that he never did know what Edmunds claimed to have turned over to him. Subsequently in the

course of the reference Moyers presented a list of two hundred and twenty-five claims in which he testified Edmunds was interested. This list was filed and marked Auditor's Exhibit B and I am informed has since disappeared from the records of the case, although filed with the Auditor's Report filed August 20, 1902.

On page 4 of that report it is expressly stated that the
161 Auditor did not undertake to determine the controversy over the identity of the schedule referred to in the agreement, but limited the findings to specific cases set forth in the complainant's bill and in testimony taken in the reference.

In acting upon that report the Court did not undertake to determine the identity of the cases included in the list attached to the original partnership agreement nor in any subsequent order or decree has this Court or the Court of Appeals made any adjudication or expressed any opinion upon that point.

We have here then the anomalous condition of a claim by the defendants for an allowance to them and their intestate by way of credit for expenses incurred in the prosecution of claims which they persistently assert were not included in the partnership agreement and in which neither Edmunds nor his estate had or have any interest.

In submitting the foregoing finding as to the expenses incurred by Moyers or his estate, I have simply reported that the defendants have in my judgment sufficiently established the expenditures claimed by them in the cases and at the times and in the amounts set forth in their exhibit and account marked R. G. D. No. 1.

I am directed to report what sum would be reasonable and proper to be allowed for the employment by Moyers of local attorneys in the claims of the estates of Thomas Kidd and Isaiah Beans. The defendants have submitted upon this point the testimony of
162 witnesses who are engaged in the claim business and to some extent prosecuting claims of the character of those which are included in this litigation.

The report filed by the Auditor on the 5th of January 1904 sets forth certain proceedings relating to the claim of the Executors of Thomas Kidd. This claim was allowed after the appointment of receivers in this cause and when ready for payment by the Department of the Treasury, one W. A. Montgomery of Edwards, Mississippi, claimed to be entitled to a fee of fifteen per cent. of the amount of the claim under an agreement with the defendant Moyers and filed this claim of his with the Treasury Department. The receivers being unable to secure payment to them without allowing this claim the said sum of fifteen per cent. of the appropriation was paid to Montgomery, the complainant reserving the right to object to its allowance from the partnership funds. In stating the account in that reference the Auditor found that the complainant was not liable under the agreement of partnership and the conditions presented in the proof, for any portion of this fee paid to Montgomery and in stating distribution between the complainant and the defendant of the fund then in the receivers' hands the amount paid to Montgomery was charged to the defendant.

The conditions established in the premises were substantially as follows: Moyers undertook to transfer the conduct of this claim to his daughter Miss Ida Moyers. At that time Moyers had employed Montgomery as local counsel in the prosecution of claims under a general agreement that he should receive a fee of ten per
163 cent. of the amount recovered The services rendered by Montgomery in the matter of this claim consists of attending to the taking of evidence and were performed and the testimony filed on or before the 24th of August 1898.

More than two years later Miss Ida Moyers prepared a form of contract purporting to employ Gilbert Moyers as attorney to prosecute this claim, with an agreement to allow him a fee of fifty per cent. of the amount which might be collected thereon, and sent it to Montgomery to procure the signatures of Susan Kidd and Mary C. King who were described in the papers as the sole heirs of Thomas Kidd deceased. When this document was returned by Montgomery it bore the signatures of these two persons and an interlined addition to the effect that 35% of the fee was to go to Moyers and 15% to Montgomery. This paper was produced by Miss Moyers in giving her evidence in that reference and was returned as an exhibit to the report filed by me on the 5th of January 1904.

In explanation of these proceedings Miss Moyers testified that she was unable to find among her father's papers any fee agreement with the claimant and that she was not informed of Mr. Edmunds' appearance in the case in the Court of Claims. The connection of Edmunds with this claim is set forth in the said report of the Auditor and briefly shows that in May 1886 he received from a son and daughter of Thomas Kidd the executors of his will, their power of attorney authorizing him to prosecute the claim; that he pre-
164 pared the original petition for reference to the Court of Claims and presented it to Congress; that the claim was referred to the Court and that on April 13, 1888 a notice of the appearance of Moyers and Edmunds as attorneys for claimants was filed in the Court of Claims, showing that Miss Moyers was ignorant of what transpired and appeared upon the records in that Court.

Under the order of reference to report what would be a fair and reasonable allowance to local counsel, I find and report that a fee of ten per cent. of the recovery in this case would be liberal compensation for the work performed by Montgomery, the entire testimony taken by him being contained in twenty-six printed pages or two hundred and seventy-one typewritten folios. I am of the opinion that the complainant or his intestate would not be chargeable with a compensation computed under the contract prepared by Miss Moyers, the work having been done under the original agreement testified to by her, by which Montgomery was to receive ten per cent. In the schedule herewith therefore I have corrected the statement of distribution contained in schedule B of the report filed on the 5th of January 1904 in such manner as to charge the complainant with so much of the amount paid to Montgomery in this case as equals one-half of ten per cent. of the claim as allowed.

In the matter of the claim of Isaiah Beans which was also the

subject of consideration in the said report of January 5, 1904, it appears that one O. I. Thomas asserted a right to one-half of the attorneys' fees in that case under an agreement with Moyers
165 dated December 4, 1895, stipulating that the fee should be equally divided between them and an agreement of the claimants in the case dated December 7, 1895, reciting the employment of Moyers and Thomas to prosecute the claim and agreeing to allow them fifty per cent. of the amount recovered.

That this was one of the claims in which the complainant's intestate had a joint interest with Moyers clearly appears in the proof as substantially recited in the Auditor's said report on page 8, showing that long before and at the time of the alleged agreement between Thomas and Moyers, and the agreement of claimants of December 1895, Edmunds' connection with the case and right to represent it was of repeated record in the Court of Claims. It appears that Thomas attended to the taking of evidence in the prosecution of this claim, the said evidence comprising three printed pages of testimony and assuming that the partnership should bear the expense of a reasonable compensation for this service I am of the opinion that an allowance of one hundred dollars would be more than ample. As Moyers claimed to have paid Thomas according to the said contract I find and report that the complainant should be charged with one-half of the allowance of one hundred dollars and upon that basis I have in the schedule herewith corrected the distribution in schedule B of the report of January 5, 1904.

I have reported an allowance of interest upon the moneys advanced by Moyers to Edmunds as directed by the order of reference.
166 I have also credited the defendant with one-half of the costs in the Court of Appeals.

In the schedule herewith I have first stated by yearly periods the allowance of expenses incurred by the defendant Moyers in the alleged partnership cases with the computation of interest thereon to the date of the filing of the bill in this cause, September 16, 1899; the expenses incurred by the defendant Moyers in the prosecution of such cases from the said date to the death of Gilbert Moyers, June 13, 1903, with interest thereon to March 31, 1906.

I have then stated by way of summary the aggregate of the said expenses and interest adding interest on the advances made by Moyers to Edmunds as set forth in the first report of the Auditor from the date of such advancements to the said 16th of September 1899 and the sum of $240.85 costs adjudged against the complainant in the Court of Appeals.

I am directed to report whether the claim of the administrator of Richard W. Johnson deceased was a partnership claim and if so to state an account of any fee paid to either of the partners on account thereof and distribution of the same.

The evidence touching this matter is mainly contained in documents produced by the complainant among which is a contract dated the 18th of March 1886, signed by Joel C. Johnson, administrator of the estate of the said decedent reciting the employment by

him of George B. Edmunds as his attorney to prosecute the claim of the said decedent against the United States Government and in consideration of his services and expenses incurred by him
167 in the prosecution of the claim agreeing to pay him a fee of fifty per cent. of the amount which might be collected thereon and making the said fee a lien on any draft that might be issued in payment of said claim.

Another document established as written and signed by the said administrator is a letter addressed to Mr. George B. Edmunds without date, evidently relating to the said claim and probably written prior to the making of the said contract and power of attorney.

The files of the Court of Claims establish the relation of George B. Edmunds with this claim as attorney including the original petition presented to Congress for the reference of the claim to that Court.

It is conceded that the first paper among the files of that Court showing the connection of Gilbert Moyers with this claim was a notice of appearance filed by him on the 25th of June 1890. No contract or power of attorney from the administrator to or with the said Gilbert Moyers had been produced, nor does it appear that either of these papers ever existed.

I find from the evidence that this was a partnership claim, that the amount allowed and collected thereon was $1968 of which Gilbert Moyers received a sum equal to twenty-five per cent. and that under the terms of the partnership the complainant is entitled to receive one-half of that fee as stated in the accompanying schedule.

JAS. G. PAYNE, *Auditor.*

Amount of fee received by Gilbert Moyers on the
168 claim of Joel G. Johnson Administrator of Richard W. Johnson	$492.00
Due the Complainant one-half	$246.00
with interest from July 25, 1902.	
Auditor's fee	$100.00
Testimony	85.00

Report of Expenses Incurred by the Defendant Gilbert Moyers in the Unsuccessful and Pending Claims Embraced in the Partnership Agreement between Himself and George B. Edmunds, with Interest to September 15, 1899, *According to the List of Claims Presented by the Defendants.*

Year.	Expenses.	Interest.	Total.
1889	263.73	161.53	425.26
1890	107.70	59.50	167.20
1891	72.00	35.46	107.46
1892	136.70	59.12	195.82
1893	155.90	58.07	213.97
1894	152.30	47.59	199.89
1895	290.83	73.43	364.26
1896	81.35	15.66	97.01
1897	35.40	4.69	40.09
1898	9.50	.71	10.21

169

Year.	Expenses.	Interest.	Total.
To September 16th, 1899.....	17.90	.36	18.26
	1,323.21	516.12	
Less for letters.....	83.40	32.36	
To Schedule B.....	1,239.91	483.76	
1899 after September 16th.....	18.33	7.15	
1900	84.20	29.46	
1901	110.05	31.91	
1902	135.75	31.22	
To June 13, 1903.....	46.00	8.51	
	394.33	108.25	
		394.33	
		502.58	

To be credited to the defendant as of May 1st, 1906, one-half of 502.58..... 251.29

JAS. G. PAYNE,
Auditor.

170 *Restatement of Account. Filed March 20th,* 1902.

Amount stated by said account as due from the defendant to the complainant as of September 16, 1899.....			$10,601.04
Expenses to September 16, 1899	1,239.91		
Interest to said date.....	483.76		
	1,723.67		
One-half		$861.83	
Interest on payments by Moyers to Edmunds as per first report of Auditor.			
Aggregate payment.....	1,470.00		
Interest to September 16, 1899.....		591.68	
One-half of costs of appeal to Court of Appeals		240.85	
			1,694.36
Corrected amount due the Complainant as of September 16, 1899.....			$8,906.68

with interest.

JAS. G. PAYNE,
Auditor.

171 *Restatement of Account of Auditor. Filed January 5th, 1904.*

SCHEDULE B.

Balance from Schedule A		6,430.82
Costs of reference per report of May 20th 1903 and January 5th 1904	152.00	
Reserved for determination of the claim of George N. Barber, in the case of Thomas Kidd	682.00	
		834.00
		5,596.82

To Horace S. Cummings, Administrator of George B. Edmonds:

One-half		2,798.41	
Less one-half expenses paid by Moyers	179.36		
For paid Montgomery	673.00		
For paid O. I. Thomas	50.00		
		902.36	1,896.05

To Estate of Gilbert Moyers:

One-half	2,798.41	
From above share	902.36	
		3,700.77

JAS. G. PAYNE,
Auditor.

172 CUMMINGS
vs.
CONSAUL.

TUESDAY, *March* 7, 1905—3 p. m.

Hearing Pursuant to Notice.

Present: Mr. C. C. Cole and Mr. C. C. Tucker.

Mr. GEORGE W. HOTT, having been sworn, testified as follows:

By Mr. COLE:

Q. Where do you reside? A. 225 Morgan Street, Washington, D. C.

Q. How long have you resided in Washington? A. About eight years.

Q. What is your occupation? A. Attorney at law.

Q. How long have you been engaged in that occupation in the city of Washington? A. Since I have been here about eight years.

Q. Where is your office? A. 1425 N. Y. Avenue.
Q. Has it been there all the time? A. Yes.
Q. Since you have been practicing here? A. Yes.
Q. Do you make any branch of the practice a specialty? A. Well, I practiced exclusively before the Court of Claims.
Q. In Government claims? A. Yes.
173 Q. Do you make any particular class of claims a specialty? A. Store and supply in fact all kinds of war claims against the Government.
Q. How long have you made the prosecution of claims of that character created by the Civil war a specialty? A. Six years.
Q. During that period about how many claims have you had in your charge and prosecuted against the Government of that class? A. It is pretty difficult for me to answer that.
Q. Give us a safe estimate? A. It would run up into the hundreds and perhaps as many as a thousand.
Q. Your clients the claimants have generally been citizen- of what section of the Country? A. In most of the southern states particularly Virginia, West Virginia, Kentucky, Tennessee and Missouri.
Q. Any farther south than you have mentioned? A. I have had occasional claims farther south.
Q. Where did the claims originate, in what section of the country? A. They originated in the states that are named where the claimants reside.
Q. I would like to know whether in that practice you have had occasion to associate with you or retain in any way local attorneys to look after the evidence and the taking of testimony in the
174 localities where the claims originate? A. With very few exceptions there have been local attorneys in all my cases.
Q. As a rule you have had local attorneys associated with you? A. Yes.
Q. Now, do you know others who have been engaged in similar practice? A. I am acquainted with all the attorneys practicing before the Court of Claims.
Q. Do you know what the practice has been on the part of others who practiced in this class of claims about having local attorneys to look after the taking of evidence in the locality where the claim originated? A. I have talked with a number of attorneys——

Mr. TUCKER: I object to the witness relating conversations with others.

Q. Are you acquainted with their practice in that particular? A. I am.
Q. Do you know whether there is usually a local attorney?

Mr. TUCKER: I object as calling for hearsay testimony.

A. I know that they do in some instances.
Q. I would like to have you state from your own practice and from what has come under your observation as to the practice of others, what the custom has been where there has been local attor-

neys who have looked up the evidence and taken it as to the
175 division of fees between the resident and local attorneys?

Mr. TUCKER: I object to that as irrelevant and immaterial and as no evidence of any custom can affect the contractual relation of the complainant's decedent and the defendant's decedent and as an improper manner of proving the reasonableness or unreasonableness of the payments made to local attorney, no witness being able to testify intelligently unless he knew the business relation between the attorney of record in a claim and the so-called local attorney.

A. As a general rule the fees are divided 1/3 to the local attorney and 2/3 to the attorney of record in the Court. That has always been my practice and it has been the practice of other attorneys with whom I have been associated as attorney in the Court.

Q. Take a case Mr. Hott originating in Mississippi, the claim consisting of the value of farm produce such as hay, grain and vegetables taken by the Army from the plantation in Mississippi where the aggregate of the claim amount to say fifty thousand dollars and where there was allowed between thirteen and fourteen thousand and the evidence was taken at four different places in Mississippi on five or six different occasions, different dates and where fourteen different person- were examined as witness and four of them examined the second time, where the manuscript evidence taken covered about from 140 to 160 manuscript pages, where the local attorney looked up the witnesses and took the evidence
176 and forwarded it to Washington where the whole fee was fifty per cent. of the amount allowed, about what proportion of that fee would you say would be reasonable and proper to be allowed to a local attorney?

Mr. TUCKER: I object to that on the ground that the question does not relate to any subject which is properly provable by expert testimony and upon the further ground that the witness has not qualified himself to testify as an expert upon claim originating in the state of Mississippi or claims of the character mentioned in the question and upon the further ground that the question presupposes services performed by a so-called local attorney in the state of Mississippi without contract with the attorney of record and further because the question does not properly state the facts in regard to the transactions of the Kidd claim which is the claim had in mind by the propounder of the question.

A. I should say that 20 per cent. to the local attorney would be a fair and reasonable allowance for his work in the matter 20 per cent. of the fee to the local attorney and 30 to the attorney of record, that in a case of that size the amount of work really falls on the local attorney, where it requires the same amount of work in the Court here on a small claim as on a large one, wherein in a large case it requires a great deal more work on the part of the local attorney than it would in a small case.

By Mr. TUCKER:

Q. In how many claims prosecuted by you as attorney in the

Court of Claims have you paid a local attorney any part of
177 your fee? A. I could not answer that question in detail I have not my records here and do not remember the number of cases.

Q. As nearly as you can recall? A. In all the cases allowed and the cases now pending in which I have contract.

Q. How many cases for stores and supplies have you had allowed in the Court of Claims in your practice? A. That is a question that requires a similar answer to my other one, as many as a hundred any way.

Q. In how many of those hundred allowed cases have you paid a local attorneys' fee? A. I should think in, of course not all of those have been paid, but in all I should say about five-sixths of the total number of claims I have handled.

Q. How many cases have you had that have been appropriated for under the Acts of 1889 and 1902 and 1905? A. I suppose about thirty cases, I should think so, there have only been two Acts passed since I have been practicing, that of 1902 and 1905.

Q. You have thirty cases appropriated for under those two acts? A. Yes, something near that.

Q. In how many have you paid local attorney? A. Under this last Act they are not paid yet, but I am under contract to pay in those cases.

Q. The local attorney in how many under the Act of
178 1905? A. I should say five-sixths of the cases I have had.

Q. In the case appropriated for under the Act of 1902 in which you were attorney, how many local attorneys were paid by you? A. Well in those cases, I was mostly interested with other attorneys in fact I did not have more than four or five.

Q. You were interested in only four or five? A. On my own account.

Q. Appropriated for under the Act of 1902? A. Yes.

Q. And the remaining number of thirty cases which you have had in the Court of Claims have been appropriated for under the Act of 1905 and have not yet been settled for? A. Yes.

Q. In those five or six in which you were interested and had appropriation for under the Act of 1902 in how many were you under contract to pay local attorneys? A. I don't think I could state that, it has been some time, and I did not think I would *going to* be called upon to testify in regard to the matter.

Q. In these cases in which you are under contract to pay local attorney when were the contracts made with them with reference to the time when the claims were instituted? A. The contracts were usually made at the time the claims were placed in my hands.

Q. In these contracts you made, you agreed to pay one-third of the fee? A. I do not think I can say in every case, in many
179 of them.

Q. Were not those cases, claim which those local attorneys sent you for prosecution in the Court of Claims? A. Some of them were and some were not.

Q. How many cases have you had where you were employed by

the claimants as attorney in which you made a contract with a local attorney to give him 1/3 of your fees? A. I don't think I could separate the two in many cases where you have local attorney he will send you cases and if you should get a case in that neighborhood, you simply employ him to look after the same on the same terms as if he had sent the case to you originally.

Q. What is the amount of the largest claim you have had paid in the Court of Claims? A. Somewheres about $9,000.

Q. What claim was that? A. The estate of James G. Taliferro.

Q. Did you have a contract to pay a local attorney a portion of that fee? A. That was a case in Virginia and I went down there and took the evidence myself.

Q. What part of Virginia? A. In King George's County, nine miles from Fredericksburg.

Q. Is that further away from Washington than Loudoun County? A. A little farther.

Q. Can you name any other large allowance that you have had in which you had a contract with the local attorney?
180 A. I have one case now for $1900.

Q. How much is to be paid to the local attorney? A. About 25 per cent., the contract was 50 per cent.

Q. Did you have a contract with him? A. Yes there was a contract between us.

Q. When was it made? A. It was made at the time the claim was made, he forwarded the contract to me with the power of attorney.

Q. He sent you that claim? A. Yes.

Q. You agreed to give him one-half of the fee? A. 25 per cent. to each.

Q. Can you name any allowance you have got in the Court of Claims where you paid a local attorney a portion of your fee without having had any prior contract with him to pay him a fee? A. Well, I don't usually do business that way, I generally have an understanding with the local attorneys as to the amount of the fee he is to receive.

Q. Can you name any case that you have prosecuted in the Court of Claims which come to you originally from the claimants in which you employed a local attorney agreeing to give him a portion of the fee to be earned and paid? A. Well, one correspondent I have in Missouri I send him some cases and he sends me some, I could not give the names of the cases I send him or the names of the
181 cases he sends me, we do business together in that way and there is a division of the fees.

Q. You were associated in the prosecution of the claims in his neighborhood which you received from the claimants and which he received from the claimants? A. Yes.

Q. You made some arrangement with him by which he was to have a share in all fees? A. One-half of the fees.

Q. Have you ever had a case Mr. Hott which you received from a brother attorney and which you agreed to prosecute and share the fees with him in which you have engaged a local attorney without

your associate's knowledge and agreed to pay the local attorney a portion of the fee contracted to be paid by the claimants?

Mr. COLE: I object as irrelevant.

A. No, I don't think that I have.

Q. Have you had any cases in which you have paid local attorneys for assisting you in the prosecution of the claim in the Court of Claims without previously making a contract with him? A. I do not recall any case now.

Mr. TUCKER: This witness having been put on the stand as an expert to prove the custom as to the payment of local attorneys and having testified that his payment to local attorneys were always *the* subject to a contract between them, I move to strike out the whole of his testimony on the ground that he has not qualified himself as such expert even if the subject matter of his testimony is proper subject for expert testimony which it is contended it is not.

182

By Mr. COLE:

Q. You have stated that you were attorney of record in quite a number of claims and the answer you have given in relation to fees to local attorneys related to that class of claims. A. The class of cases I prosecuted before the Court of Claims.

Q. As attorney of record? A. Yes.

Q. I would like to know whether during your practice in the Court of Claims you have been interested in other claims with other attorneys in which you were not the attorney of record? A. I suppose that I have prepared more cases for trial than any other one attorney in the city, I do not recall but one case in which I am interested that I am the attorney of record.

Q. I am embracing all your business? A. Whenever I have prosecuted claims I was usually the attorney of record.

Q. Have you done any work for other attorneys in this class of claim before the Court of Claims where you have not been either the attorney of record or attorney in the case?

Mr. TUCKER: I object as immaterial.

183

Q. Give us in a general way the extent of your service in that regard for other attorneys? A. I suppose I have briefed more cases, prepared more cases for trial here in the Court of Claims for this class of claims than any other attorney in the city.

Q. Do you remember who generally you have prepared them for, what attorneys? A. Colonel C. W. Black, H. M. Gitt.

Q. You never prepared any for Mr. Moyers? A. I never did.

Adjourned to Saturday, March 11, 1905, 10 A. M.

MARCH 11TH, 1905—10.30 o'clock a. m.

Met pursuant to adjournment.

Present: Mr. Tucker on behalf of complainant and Judge Cole on behalf of the defendant.

Whereupon CYRUS SNYDER, being called on behalf of defendant and being first duly sworn, testified as follows:

Direct examination.

By JUDGE COLE:

Q. Colonel Snyder, how long have you resided in Washington? A. I have been here as a permanent resident since 1890.

Q. And were you in Washington much of your time prior
184 to that date? A. A good deal of the time; frequently. I formerly lived in Tennessee.

Q. What is your occupation? A. I am a lawyer.

Q. How long have you been engaged in the profession of practicing law? A. Well, almost continuously since 1858.

Q. In later years, say within the last twenty years, where has your practice been, mainly? A. Up to 1890 it was in Chattanooga, Tennessee. Since that time it has been in Washington.

Q. Have you made a specialty at any time during your practice of any particular line of practice? A. Yes, sir.

Q. What? A. Since my residence in Washington and for some years prior thereto I have made an exclusive business of prosecuting claims against the Government growing out of the War.

Q. Claims growing out of the Civil War, you mean? A. Yes, sir.

Q. Without attempting to give the particular number of such claims that you have been interested in, either solely or with other attorneys, I wish you would give us some general idea of the extent of your practice in that line? A. Well, I could only estimate that by the pages—the number appearing on my docket, which
185 I am safe in saying would amount to 600 or 700 cases.

Q. What proportion of those cases would you say in a general way you have prosecuted to a final determination in the Court of Claims? A. Well, I would say three hundred or more.

Q. In what section of the country generally were the claimants whom you represented in those cases? A. They were all or nearly all in the seceded states—in the States seceding; in nearly all those States scattered around.

Q. Some in nearly all of the States? A. In nearly all of the States. I had cases in nearly all except possibly Texas. I think that is the only exception.

Q. I wish you would state whether in your practice you have a knowledge, or whether there is a custom amongst the practitioners in the Court of Claims in that class of claims, about employing local attorneys in the localities where the claims arose for the purpose of looking up and taking evidence, and, if so, if there be any custom or practice in that regard, state what it is.

Mr. TUCKER: Objected to upon the ground that testimony of any so-called custom or usage in the matter of employing so-called local attorneys in the class of cases mentioned by the witness, is immaterial and irrelevant to the issue here presented, in view of the testimony already in this case as to the contractual relations between the deceased partners; and upon the further ground that no
186 testimony concerning any custom or usage is admissible to show the reasonable value of the services performed in the Kidd and Bean cases under the circumstances, and by reason of the previous testimony in this case showing the practice or custom of the decedent, Gilbert Moyers, to pay such local attorneys, per diem fees, for collecting evidence and taking testimony in such cases.

The AUDITOR: The ruling is reserved.

A. In answer I would say that I am not familiar with the practice or custom of other attorneys engaged in like business as to terms of local attorneys.

Mr. TUCKER: Then, I further object to the witness answering the preceding question upon the ground that his testimony would be absolutely incompetent to show the custom or usage.

Q. What were you going to say in addition, Colonel? A. I was going to state what my practice and custom was, and usage.

Mr. TUCKER: I object to the witness stating what his practice and custom was.

Q. I don't think I will have you state what your custom and practice was, if you did not learn about any general custom amongst all or a majority of the attorneys. I understand you to say you did not acquire any knowledge of any such custom? A. Of any practice or action of any particular attorney, but as I understand it, without being able to state from what source, there is an under-
187 standing amongst attorneys prosecuting that class of claims, that where the contract for fees is of fifty per cent., that is understood to mean, and the contract is so, that the attorney of record, myself, for instance, representing the case, shall pay all expenses—reasonable, proper expenses—of the prosecution of the claim. And where local attorneys are employed to look after the case at the other end—the locality where the claimant lives—they are allowed one-third of the fee; and in cases where the local attorney pays the costs and expenses and takes the proof, we give him one-half of the fees.

Mr. TUCKER: I object to and move to strike out the answer of the witness upon the ground that he had previously disqualified himself to testify as an expert on the subject matter of this examination; and upon the further ground that no understanding between attorneys practicing in the Court of Claims, is evidence of a usage or custom; and lastly upon the ground that the subject matter of the answer is not a proper subject of expert testimony.

The AUDITOR: The answer will stand under the agreement, otherwise I should have no trouble about excluding it.

Q. Colonel, I wish you would state now whether in your practice you have ever employed any local attorney or attorneys at the place where the claim arose for the purpose of looking up and taking the evidence and looking after the interests of the claim in that locality?

Mr. TUCKER: Objected to on the ground that the course of practice of the witness alone is not evidence of usage or custom
188 among attorneys, and is absolutely irrelevant and immaterial to the issue now presented.

A. I have employed such local attorneys in many cases.

Q. Take a case of a claim for farm produce, such as hay, straw, vegetables, rent of buildings and other items of like kind, aggregating from thirty-five to forty thousand dollars, originating in the State of Mississippi, in the general locality of Vicksburg, and east of it, which claim arose during the Vicksburg campaign, where the evidence in support of the claim was taken on four or five different *coo*casions, at three different localities, the evidence in support of the claim consisting of the testimony of fourteen witnesses, two or three of whom were examined a second time, and the aggregate of the manuscript evidence covering from 135 to 150 pages, where the total fee in the case was fifty per cent., and a local attorney in Mississippi did the work of looking up and taking the evidence, and where the total fee amounted to about $6,000., what would be a reasonable compensation for the local attorney in such a case as that, according to your judgment, based upon your own experience in that business and your knowledgfe of what was done by others?

Mr. TUCKER: Objected to on the ground that the subject matter of the question is not a proper subject for expert testimony, and further that such testimony, if admissible at all, is inadmissible in view of the contractual relations between the deceased part-
189 ners; and lastly, because the question incorrectly states the facts regarding the Kidd claim.

A. In such a case one-third of the fee would properly and equitably belong to the local attorney.

Mr. TUCKER: I object and move to strike out the answer of the witness, upon the ground that he has usurped the function of the Court in replying to the question.

Q. My question is, what would be a reasonable compensation to the local attorney under such state of fact?

Mr. TUCKER: Objected to on the same ground.

A. I would say one-third of the fee of fifty per cent.

Q. Where has your office been while you have been practicing in Washington? I mean was it with Colonel Moyers more or less of the time or all the time? A. I have nearly all the time officed in his office. My office was in his.

Q. Were you associated with him in any way; I mean did you have any interest in his business? A. No, sir; no interest in his business.

Q. Where is your office now? A. I am in the office of Moyers & Consaul.

Q. Have you any interest in their business? A. No, sir; but I employ them to assist me in many of my cases.

Q. And pay them for their services? A. Yes, sir.

190 Cross-examination

By Mr. TUCKER:

Q. By Moyers and Consaul, you mean Mr. Charles F. Consaul, the son-in-law of Gilbert Moyers, deceased, and Ida M. Moyers, the daughter of such decedent? A. Yes, sir.

Q. And you had offices with Colonel Moyers how long before his death? A. Well, since 1891.

Q. Did you not know that it was a habit and custom of Colonel Moyers in the prosecution of these Bowman and Tucker Act claims to employ local attorneys in many of them and to pay them *per diem* fees for collecting evidence and taking testimony in the localities where the claims originated? A. I have no knowledge of any such cases. I have a general recollection that he did so in one or more instances but it was not his custom.

Q. You are sure of that? A. I am quite sure of it; quite sure. Where he employed and paid *per diem* compensation to an attorney, I think it was the exception to his rule.

Q. Did you ever hear of a case that he had, that of Abraham Eichberg, where he employed William H. Jones, as a local attorney and paid him $10. a day, or of the case of Susan Thagard, where he employed Henry S. Cook as local attorney and paid him $10. a day, or the case of Patrick Lynch where he employed M. Lewis

191 at Atlanta, Georgia, as local attorney, and paid him $10. a day, or of the case of Lucy A. Caldwell of Little Rock, Arkansas, where he employed Sol Clark as local attorney, and paid him $10. a day, or of the employment of White and Altheimer as local attorneys at Plum Bayou, Arkansas, and paid them $10. a day? Did you ever hear of any of those cases? A. No, sir.

Mr. TUCKER: I refer to page 241 of the printed record in the Court of Appeals.

Q. Can you name any attorneys practicing in the Court of Claims who, you know from your own knowledge, indulged in this habit or custom, that you speak of, of employing local attorneys and paying them part of their fees? A. No, I cannot definitely.

Q. Aren't you testifying almost exclusively as to your practice and custom in the matter of employing local attorneys? A. Principally so; yes, sir; but I have frequently talked to other attorneys, whom I am not now able to name, in regard to that question of compensation to local attorneys.

Q. Now, can you name any instance in which you ever employed a local attorney and gave him one-third or one-half or any portion of the fee agreed to be paid you by the claimant, where the local attorney did not send you the claim? Do you understand the question? A. Yes, I now think of one particular case. That is a case of Pink Dews against the United States.

192 Q. What was the finding in that case? A. The finding was for $1,130.

Q. Did you receive the claim directly from the claimant? A. No, sir. I sent the name of the claimant and asked the attorney to look him up.

Q. Whom did you ask to look him up? A. Our local attorney. Do you want the name?

Q. Yes. A. N. McNairy Smith.

Q. Where was that? A. At Nashville, Tennessee.

Q. And he procured for you a contract with the claimant? A. Yes.

Q. You had simply heard of the claim? A. I got it from the records of the Claims Commission.

Q. You got it from the records of the Southern Claims Commission, sent it down to this gentleman you have named and asked him to look up the claimant? A. Yes.

Q. And he did so? A. Yes.

Q. And procured a contract for fees with the claimant? A. Yes.

Q. And you afterwards prosecuted the case to a finding?

193 A. Yes.

Q. And gave him what part of the fee? A. One-half of my fee or fifty per cent.

Q. He, I presume, took all the testimony? A. Yes.

Q. And you tried the case in the Court of Claims? A. Yes.

Q. Now, can you think of any other case in which you had paid a local attorney any part of your fee where the case did not originate with him? A. My memory is not very bright. I know generally a number of such cases. I employed a man by the name of G. W. Lawrence at, I think it is, Fayetteville, North Carolina, in a number of cases there in his vicinity.

Q. Do you remember the names of the cases? A. One case, which I think was a case of that kind, was Thomas Bullock, and some others which I cannot now recollect.

Q. Did you get those claims from the claimants themselves? A. No, sir.

Q. Whom did you get them from? A. I got them, like the Pink Dews Case. I got the names from the records of the Claims Commission as having been disallowed, and got the locality from that record and sent down to this man to secure powers, &c.,

194 just as in the Pink Dews case.

Q. And he did obtain contracts and powers of attorney for you, and you shared the fees with him? A. Yes.

Q. I want to know, Mr. Snyder, whether you ever had a case, or ever knew of a case, which any other attorney had in which you or he got the contract from the claimant originally, employed local attorneys to take the testimony and then, after all the testimony was taken, agreed to give the local attorneys a third or one-half or other portion of the fee agreed to be paid by the claimant. A. I cannot recollect just such a case.

Whereupon an adjournment was taken to meet on Friday, March 17th, 1905 at 1 o'clock P. M.

CUMMINGS
vs.
CONSAUL.

WEDNESDAY, *March* 29, 1905—3 p. m.

Hearing pursuant to notice.

Present: Messrs. Huidekoper, Donaldson, Consaul and Mr. C. C. Tucker.

Major WILLIAM E. HARVEY having been sworn testified as follows:—

By Mr. HUIDEKOPER:

Q. Where do you live? A. 1920 6th Street, N. W.

Q. How long have you lived here in the District of Columbia?
195 A. Twenty-five years.

Q. What is your business? A. Lawyer.

Q. How long have you been engaged in that business in this city? A. Between seventeen and eighteen years, of course I haven't practiced law that length of time, but I have been a member of the bar since 1893 and connected with law offices.

Q. What branch of the law business do you make a specialty of? A. Claims in the Court of Claims.

Q. What firm are you connected with? A. I am connected with the firm of George A. and William B. King.

Q. How long have you been connected with them? A. Since September 1887.

Q. In that firm what are your special duties? A. I am their manager and have charge particularly of Congressional cases under the Bowman and Tucker Acts.

Q. Cases under the Bowman and Tucker Acts? A. I had exclusive charge of those cases in that office for five or six years, during all the time I have been there I have had more or less to do with them.

Q. To your knowledge how many cases since you have been connected with that office have they had under the Bowman and
196 Tucker Acts? A. Well I can't do more than approximate, between five hundred and a thousand.

Q. In those cases, in what section of the country did the claimants reside? A. As a general thing in the southern states, being the states between here and Missouri and from there south.

Q. Along the coast and the Mississippi River do you mean? A. Yes.

Q. You say you *had have* between five hundred and a thousand cases and those are principally in the southern states, I would like to know whether in your practice you have had occasion to associate with you or retain any local attorneys to look up the evidence and the taking of the testimony in the localities where those claims originate? A. Frequently.

Q. That is your custom frequently? A. I would not say that it

was our exclusive custom we take some of the testimony ourselves but as a general thing we rely on local counsel.

Q. As a general rule you rely on local counsel to take the evidence? A. Yes.

Q. Do you know whether it is the custom of other attorneys having similar cases to employ local attorneys to look after the evidence and take the testimony?

Mr. TUCKER: I object upon the ground that in view of the terms of the partnership articles testimony as to any special custom
197 is irrelevant, immaterial and incompetent.

A. I cannot speak on that point except as to one of two firms. We succeeded to the business of S. P. Knut a careful examination of his records and data connected with the cases, I have gathered that it was his custom to rely on local counsel to a large extent. Of course I am not in a position to speak from personal knowledge but as a matter of common report other attorneys have a similar practice.

Mr. TUCKER: I move to strike out that part of the preceding testimony relative to the practice or custom of Mr. Knut on the ground that the particular instances are not admissible in proof of custom and to strike out the latter part of the answer upon the ground that it is hearsay.

Q. Were you ever connected with the firm of S. P. Knut? A. Yes, we were associated with him and handled his business.

Q. Will you state the custom in the cases which you had of S. P. Knut in regard to the employment of local attorneys?

Mr. TUCKER: I object on the ground that proof of particular instances is not competent proof of a custom or usage.

A. In many of his cases, he had arrangements with local counsel to take testimony.

Mr. TUCKER: I move to strike out the answer because it appears that agreements or contracts spoken of by the witness as arrangements were in existence between Mr. Knut and the local
198 attorneys, which negatives the idea that there was any custom or usage in the matter of the employment by him of local attorneys.

Q. What is the extent of the business of King and King in claims under the Bowman Act about the number of cases in reference to other attorneys here in Washington? A. I should say that our Bowman Act business was probably only exceeded by Moyers and Consaul and Colonel Black.

Q. Have you stated that you knew the custom of attorneys practicing before the Court of Claims as to employing local attorneys? A. From common report.

Q. Take a case originating in Mississippi, the claim consisting of the value of produce such as hay, grain and vegetables taken by the Army from the plantation in Mississippi where the aggregate of the claim amounts to say fifty thousand dollars and where there are allowed between thirteen and fourteen thousand and the evidence

was taken at four different places in Mississippi on five or six different occasions, different dates and where fourteen different persons were examined as witnesses and four of them examined the second time, where the manuscript evidence taken covered about from 140 to 160 manuscript pages, where the local attorney looked up the witnesses and took the evidence and forwarded it to Washington where the whole fee was fifty per cent. of the amount allowed, about what proportion of that fee would you say would be reason-
199 able and proper to be allowed to a local attorney?

Mr. TUCKER: I object on the ground that the subject matter of the question is not subject for expert testimony and upon the further ground that in the Kidd case to which the question relates there was a definite contract between the defendant Moyers and the local attorney made before the testimony was taken and filed and in accordance with an agreement made subsequently thereto and upon the still further ground that the evidence already in the case concerning that case is incorrectly stated in the question, and also upon the ground that the question is immaterial irrelevant in view of the provisions of the partnership articles in evidence.

A. I would say that a contingent fee to the local attorney of from one-third to one-half of the net fee would be reasonable.

Q. What do you mean by net fee? A. After deducting any costs of collections, for instance if the collection is made through a bank and the bank charged a commission for making the collection we should deduct that, and that is what I refer to as net fee.

Q. To whom? A. The net fee to the counsel, I mean the total fee collected less any incidental expenses.

Q. In a case such as I have stated where the local attorney was allowed 15 per cent. of the fee collected, would you say that was or was not a reasonable fee where the counsel of record receives
200 a fee of 50 per cent. of the amount recovered?

Mr. TUCKER: I object on the same ground.

A. I would say that would be a reasonable fee.

Q. You stated in a former answer that one-third to one-half of the fee collected by the attorney of record was a reasonable fee to be paid to the attorney for taking the testimony in the locality where the claim arose, is that correct? A. That is correct.

Q. In the hypothetical case such as I have cited is a fee of 15 per cent. of the amount collected a reasonable fee to allow a local attorney where the fee of the attorney of record is 50 per cent.?

Mr. TUCKER: I object on the ground heretofore stated and upon the further ground that the witness has already testified that a fee to the local attorney of 15 per cent. of the fee of the attorney of record would be a reasonable fee.

A. Yes that is a reasonable fee.

By Mr. DONALDSON:

Q. According to the record it is shown that you answered a moment ago that 15 per cent. of the amount of the fee collected by

the counsel of record was a reasonable fee to the local attorney, I wish to know if you desire it to stand as shown on the record? A. I meant by that answer, that that fee is not excessive. I
201 think that a fee of 15 per cent. out of 50 per cent. which the attorney of record recovered is no more than a local attorney may fairly ask and be paid.

Q. Do you mean 15 per cent. of the fee which is collected by the counsel or 15 per cent. of the amount of the claim collected?

Mr. TUCKER: I object on the ground that the meaning of the witness is perfectly plain as is apparent from his answer and that the question is leading and suggests to the witness that he change the answer.

A. Fifteen per cent. of the claim collected out of a fee of 50 per cent. is a reasonable fee to pay to a local counsel in such case as the one cited.

By Mr. TUCKER:

Q. So far as your knowledge goes is it not a uniform practice among attorney handling these Bowman Act claims to make definite contracts or agreement with the local counsel which such counsel are engaged to take testimony? A. I cannot say as to the general custom that is the practice in our office where the business is large.

Q. That is to say in your office it is the practice to make definite contracts or agreements with local attorneys but he is called upon to take the testimony? A. That is the general practice.

Q. In your office? A. Yes.

Q. What if any knowledge of this course among other attorneys practicing in the Court of Claims on this class of cases, have
202 you? A. I cannot speak except as to Mr. Knut's office.

Q. That office is your office? A. Yes.

Mr. DONALDSON: We make the same objection as Mr. Tucker, and that is that special instances are not admissible to prove custom.

Q. Can you recall any instance of the prosecution of such claims as this in this office or elsewhere where the local attorney was engaged to take testimony and did so and after the collection of the claim was paid as his fee a proportionate part of the fee received by the attorney of record? A. Yes, I can recall such a case.

Q. What is the case? A. In the case of B. F. Perry administrator of Ephriam C. Cooper recently settled, there was an agreement to pay out of a fee of 50 per cent. agreed upon, to S. O. Clark 15 per cent. and to P. A. Thweatt 15, as I recall it Thweat took the testimony in the case with the assistance of Judge Clark.

Q. You say an agreement was made with those local attorneys when was the agreement made with reference to the taking of the testimony? A. As I recall it now, I have not specially looked it up the agreement was made prior to the taking of the testimony.

Mr. TUCKER: Then I object to the answer of the witness as not responsive to the question.

Q. What I want to get at is this. Do you know of any
203 instances where the local attorney was paid a fee based upon a contingent fee received by the attorney of record without any special contract or agreement having been made with the local attorney before he had taken the testimony in the case?

Mr. HUIDEKOPER: I object as immaterial and as not covered by the facts in this case.

A. I cannot specify any case in which the fee has been paid to the local attorney which had not been agreed upon in advance.

Q. Then Major Harvey, as I understand it, you cannot testify as to any usage or custom of paying local attorneys part of the contingent fee but can simply testify as to custom or usage in your office, and in Mr. Knut's office in the making of contracts or agreements with the local attorneys for the payment of part of the contingent fee?

Mr. DONALDSON: I object to the counsel reciting what his understanding of the witness' testimony is, the record will speak for itself.

A. It is the practice in our office to pay local attorneys a share of the fee and we agree with the local attorneys as a general thing what their share shall be and when we make the agreement we take into consideration the contingencies. I can testify that it is our custom to pay local attorneys a share of the fee.

Q. What if anything do you know about the custom or practice of attorneys engaged in the prosecution of this class of claims
204 to pay local attorneys a perdiem fee for the taking of testimony, that is not on a contingent basis?

Mr. HUIDEKOPER: I object as irrelevant and immaterial under the facts in this reference.

A. My knowledge on that subject is limited to our practice we seldom make agreements with local attorneys to take testimony on a per diem. We generally prefer to offer them a contingent interest in the case rather than to make disbursements ourselves.

Q. In these cases where you make contracts with local attorneys to pay them a part of the contingent fee is it not largely the case that such local attorneys have sent the case to you for prosecution? A. Sometimes and sometimes not. If we have a case that needs a local attorney and the claimants are unable to pay for taking the testimony and we have a sufficient fee agreement to warrant us in making a division we engage a local attorney to complete the case.

Q. Can you recall any instance where the finding was above ten thousand dollars, where local attorney, who had not himself procured the case and sent it to you for prosecution, was paid 30 per cent. of the contingent fee that you received, for taking the testimony?

Mr. HUIDEKOPER: I object for two reason-, first that it not the case on the record and second that 30 per cent. might have been

applicable to a fee recovered of less than ten thousand dollars and yet be a reasonable fee in the mind of the witness.

Mr. DONALDSON: I object, I do not see that it is material
205 to reference under consideration.

A. I cannot recall any case over ten thousand dollars where such a fee has been paid to the attorney who did not send the case in.

Q. You think it would be reasonable to pay such a fee in such a case as that? A. I do, because with us we do not consider so much the amount of the claim as the difficulty in the way of collecting it, in arranging out fees and dividing with the local attorneys.

By Mr. DONALDSON:

Q. Can the attorney of record here or the local attorney elsewhere tell in advance how much will be recovered on one of these Bowman Act claims? A. No sir.

Adjourned subject to notice.

THURSDAY, *March 30th*, 1905—3 o'clock p. m.

Met pursuant to agreement of counsel.
Present: Mr. Huidekoper and Mr. Tucker.

Whereupon G. W. Z. BLACK was produced as a witness on behalf of defendant, being first duly sworn, testified as follows:

Direct examination.

By Mr. HUIDEKOPER:

206 Q. Colonel Black, what is your business and profession? A. Well, I am a lawyer practicing in the Court of Claims. I make a specialty of prosecuting war claims.

Q. And you live where? A. My office is in this City.

Q. How long have you lived in this City? A. Since 1872.

Q. And how long have you been a lawyer practicing in the Court of Claims? A. I have been practicing before the Court of Claims I think about twenty years. I cannot give the exact date, but I think something like twenty years.

Q. Have you had occasion to manage cases under the Bowman and Tucker Acts? A. That has been my business exclusively since I have been practicing in the Court of Claims.

Q. At a rough guess, how many claims against the Government under those acts have you had? A. Well, several hundred cases. I suppose at a rough guess over a thousand; probably twelve or fifteen hundred.

Q. Do you know what the custom is for the attorney of record to employ local attorneys to look after the taking of testimony and examining witnesses in the locality where the claim originated?

Mr. TUCKER: Objected to as immaterial and irrelevant in view of the provisions of the partnership articles, and also as an
207 improper manner to prove usage or custom, if the same be in anywise material.

A. I do.

Q. What is that custom?

Mr. TUCKER: Objected to on the same grounds.

A. The custom is to allow the local attorney one-half of the fees.

Mr. TUCKER: I move to strike out the answer as not responsive to the question.

Q. I would like to know whether, in your experience, you have had occasion to associate with you local attorneys to find witnesses and to take testimony in the localities where the claims originated?

Mr. TUCKER: Objected to on the ground that proof of the witness' practice or custom in this regard is not evidence of a custom or usage among attorneys engaged in the same class of practice.

A. Well, I have had occasion to do that many times, and am doing it right at this time in cases.

Q. Is that the general custom which prevails among attorneys in such cases before the Court of Claims?

Mr. TUCKER: Objected to as irrelevant and immaterial for the reasons stated above.

A. I might say that it is the general custom, although it does not, of course, obtain in all cases, because in some cases I go to the locality and take the testimony myself.

Q. Take a case originating in Mississippi, the claim consisting of the form of farm products such as hay, grain, and vegetables taken by the army from the plantation in Mississippi, where the aggregate of the claim amounts to say, $50,000. and where was allowed between thirteen and fourteen thousand dollars, and the evidence was taken at four different places in Mississippi on five or six different occasions at different dates, and where fourteen different persons were examined as witnesses and four of them were examined a second time, where the manuscript evidence taken covered about 140 to 160 manuscript pages, where the local attorney looked up the witnesses and took the evidence and forwarded it to Washington, where the whole fee was fifty per cent. of the amount allowed, about what proportion of that fee would you say would be reasonable and proper to be allowed to a local attorney?

208

Mr. TUCKER: Objected to upon the ground that the question mis-states the evidence relating to the Kidd claim to which it refers, and on the further ground that the subject matter of the question is not a proper subject for expert testimony; and on the further ground that the question calls for irrelevant and immaterial testimony owing to the provision in the partnership articles on the subject of expenses in the prosecution of the claims covered by such articles; and upon the further ground that the question calls for generally incompetent, irrelevant and immaterial testimony.

A. I should say that twenty-five per cent. would be a fair allowance to the local attorney in that case.

Q. Colonel, what do you mean by twenty-five per cent?
209 A. I mean, of course, twenty-five per cent. of the amount recovered on the claim from the Government.

Q. You have stated that you are conversant with the custom in regard to employing local attorneys to look after the evidence. Will you state what a reasonable fee is to pay to local attorneys to examine witnesses and take testimony in the locality where the claim originated?

Mr. TUCKER: Objected to on the ground that the witness has already answered this question, and upon the grounds of immateriality and irrelevancy already stated.

A. In my judgment a contingent fee of twenty-five per cent. for a competent local attorney is not excessive. I might qualify that by saying that it don't always reach that much in my practice. Some of these cases are taken at a ridiculously low fee and you divide the fee with the local attorney, and in some of these cases it makes a very inadequate fee. I don't know whether those outside of the practice are familiar with the trouble, annoyance, and expense of procuring these claims.

Mr. HUIDEKOPER: I move to strike out the last half of that answer, all that part after the word "practice," as not being responsive to my question.

A. I did not intend that that should go down. That is not pertinent, I suppose.

Q. Please state from your experience in prosecuting claims under the Bowman Act whether it is possible before the trial of an ordinary case to say what will be the amount allowed by the Court.

210 Mr. TUCKER: Objected to as calling for utterly inconsequential testimony, and for the reason that the answer must be perfectly obvious to any court or lawyer.

A. Of course I could not predicate what the court would do in any case.

Q. State whether it is ordinarily possible to even approximate the probable allowance by the Court.

Mr. TUCKER: Objected to on the same ground.

A. Of course it is not. It is purely a mere guessing contest and you might guess at anything.

Cross-examination.

By Mr. TUCKER:

Q. Isn't it customary among attorneys prosecuting this class of claims we are speaking of, to make their arrangements with their local attorneys, where such are employed, before the taking of testimony in support of the claims? A. That is in regard to the fees?

Q. Yes, as to fees. A. Well, sometimes in my practice it is done and sometimes it is not. So far as my practice is concerned there

is no castiron rule about it. I have a case undergoing settlement now where the man is claiming a share of the fees and there never was any arrangement made.

211 Q. How many cases do you recall where you have paid local attorneys one-half of the fees you have collected where you have made no agreement or contract with him as to his compensation before the testimony was taken and all of the work done by the local attorney?

Mr. HUIDEKOPER: I object on the ground that proof as to an individual case is not proof of a custom; and as immaterial and irrelevant.

A. It would be impossible for me to say.

Q. Can you name a single instance? A. I doubt whether I can. I doubt if I ever had a single instance, if I understand the question; that is, where I had no agreement at all with the local attorney and allowed him one-half of the fees?

Q. Yes. A. I don't know that I ever had a case of that kind. Generally, in almost every case, the arrangement is made before the case comes to trial.

Q. And where you pay the local attorney one-half of the fees is it not usually the case that he has sent you the case for prosecution in the Court of Claims?

Mr. HUIDEKOPER: Same objection.

A. Not in all cases.

Q. Well, in what proportion of the cases is that true? A. What proportion they would bear to the whole of my business?

Q. Yes. A. Well, not a very large proportion I don't think.

212 Q. Can you recall any instance where you have paid a local attorney $2,000 or over as his share of the fee after the preparation had been made without having made any prior contract or agreement with him?

Mr. HUIDEKOPER: Same objection, and I also object because the facts stated in the question are not material to the facts in the case before the Auditor.

A. I cannot, because I never had a case of that size where the fee amounted to that much where there was any local attorney connected with the case.

Q. Is it not practically a universal custom among you attorneys practicing in the Court of Claims where the claim is a large one, anywhere from fifteen to fifty thousand dollars and you employ a local attorney, to make some arrangements with such attorney as to his compensation before he performs his services? A. It would be difficult for me to answer that question specifically from the fact that I have very few cases of that size, and of course I cannot recall any instance that would apply.

Q. Assuming these further facts in connection with the hypothetical question mentioned in the direct examination, that it is agreed between the attorney of record in the case referred to, originating in

Mississippi, and a local attorney there, that he should receive ten per cent. of the recovery in all cases originating in his neighborhood and in which he should take testimony and otherwise act as local attorney, and upon that arrangement he takes all of the testimony and acts as the local attorney in the prosecution of the claim
213 in question; that after all the testimony was taken and returned to the Court of Claims in Washington, the attorney of record in Washington sends a fee contract to the claimant through such local attorney which provides for the payment of a fifty per cent. fee to the Washington attorney; that the local attorney returns this fee agreement signed by the claimant and interlined with the provision that the local attorney should receive as his part of the fee fifteen per cent. instead of ten per cent. of the amount recovered; that the amount of the recovery is in the neighborhood of thirteen thousand dollars and the fee payable by the claimant is one-half of that sum; have you any professional experience or knowledge as an expert upon these matters that would enable you to say what would be a reasonable fee to be paid the local attorney under such circumstances?

Mr. HUIDEKOPER: I object to that as immaterial and irrelevant.

A. I should say that my general knowledge that I have—of course I don't wish to be understood as saying that I could distinguish in every different case that might come along, you know, because the expenses weigh in different directions.

Q. Have you had any experiences with any cases which present the same features or peculiarities as the one I have cited? A. I might say I have. I have cases of my own in which the testimony has been taken and a written contract entered into, and the
214 local attorney has concluded that his services were worth more and he has demanded more, and recast the contract, or by correspondence agreed he should have more. I have a case like that just at this time.

Q. In other words you have been held up by local attorneys after you have done all the work? A. I don't know I would call it held up.

Q. If you have any professional knowledge or experience which would enable you to say what would be a reasonable fee to pay the local attorneys under such circumstances, state what it is? A. I should think the local attorney should have from sixteen and two-thirds to twenty-five per cent. of the amount recovered.

Redirect examination.

By Mr. HUIDEKOPER:

Q. Please state whether or not the facts set forth in the hypothetical question asked on cross-examination would indicate that the local attorney controlled the case; in other words, where the local attorney had the other fee agreement fixed up the way Mr. Tucker suggested. A. I should think it was within his control.

Adjourned.

CUMMINGS
vs.
CONSAUL.

TUESDAY, *May* 16, 1905—1:30 p. m.

Hearing pursuant to notice.

Present: Messrs. Donaldson for the defendants and Mr.
215 Tucker for the complainants.

Mr. DONALDSON: Pursuant to the request of counsel for the complainant we have prepared and submitted to him for his examination an itemized list of the expense for which we claim we are entitled to be reimbursed and we file it now as a part of the record in this case. This list was prepared by Mr. Newbeck who has been heretofore called to the stand and who at that time agreed to prepare and furnish this statement, it is marked R. G. D. No. 1.

Mr. TUCKER: I here file on behalf of the complainant an itemized account to be marked H. S. C. No. 1, containing the items of expense claimed by the defendants in dismissed cases, which the complainant admits and consents that the defendant shall be allowed credit for, save and except only the items of expense contained in another list which I now file on behalf of the complainant marked H. S. C. No. 2 containing a list of items relating to a class of expenses which complainant will admit if proved, but which the complainant calls upon the defendant to prove.

These two lists are made up from information contained in exhibit R. G. D. No. 1. I file another list made up from information contained in defendant's exhibit R. G. D. No. 1 to be marked H. S. C. No. 3 containing items of expense claimed by the defendants in the prosecution of pending cases. On behalf of the complainants I admit that the items of expenses as shown by this last named list were incurred by Gilbert Moyers deceased, in the prosecution
216 of this class of claims but I deny on behalf of the complainant the right of his administrators to receive credit for such items of expenses on the ground that his estate is not entitled to credit for such items of expenses until the cases shall be allowed and appropriated for or dismissed by the Court of Claims.

I object further to the items contained in defendants exhibit R. G. D. No. 1 (save and except those set forth in complainants exhibit H. S. C. Nos. 1 and 3) and call for strict proof of each and every of the items of expense therein as well as for the items of expense set forth in complainants exhibit H. S. C. No. 2.

Mr. FRANCIS L. NEUBECK, having been sworn, testified as follows:

By Mr. DONALDSON:

Q. Will you please state your present occupation? A. I am employed by Moyers and Consaul.

Q. Charles F. Consaul and Ida M. Moyers trading as Moyers and Consaul? A. Yes.

Q. How long have you been so employed? A. Since the death of Colonel Moyers.

Q. When was that? A. June 1903.

Q. Were you in the employ of Colonel Moyers? A. Yes.

217 Q. For how long a period? A. From February 1900.

Q. Will you state generally what your duties have been or were during Colonel Moyers' life time and since his death since you have been with Moyers and Consaul? A. I have been engaged in general work in the prosecution of claims in the office of Colonel Moyers and now in the office of Moyers and Consaul.

Q. State how extensive your knowledge of the cases in the office is. A. I may state that I have done all classes of work in the prosecution of such cases from the time of their reception into the office until their collection.

Q. I hand you exhibit R. G. D. No. 1 and ask you if you have ever seen that before? A. I have.

Q. Who prepared it? A. I did.

Q. Will you state briefly the manner in which you derived the information with reference to the letters written by Colonel Moyers to the various claimants mentioned in that statement? A. I derived the information from the press copy books of the late Colonel Moyers and also from his dockets.

Q. When you speak of dockets what dockets do you mean? A. I mean the dockets in which he kept a record of his cases pending — the Court of Claims and before Congress.

Q. Directing your attention to many items for preparing
218 and filing motions, please state how you derived the information in reference to those items? A. I derived that information from the papers on file in the Court of Claims and from the dockets in Colonel Moyers' office.

Q. During your connection with the office of Moyers and Consaul and with that of Colonel Moyers state the extent of your experience in reference to preparing and filing such motions? A. Well I prepare such motions myself and file them.

Q. About how frequently would you file them, many or few? A. It is customary to file such motions or calls usually after reference of the case to the Court of Claims by Congress.

Q. My question was about how extensive was your experience in that regard? A. I might say that during the last two or three years I have prepared practically all such motions that have been prepared in Colonel Moyer's office and in the office of Moyers and Consaul.

Q. Please state briefly about what labor and time is involved in preparing and filing these motions and calls charged for in this itemized statement you have in your hand? A. In order to prepare such motions and calls it is necessary to familiarize yourself with the names of the claimants their residence during the
219 war and of course the numbers of the cases.

Q. Does that involve your resorting to the records of the Court of Claims? A. Unless you have a good memory and are certain where the claimant resided.

Q. During the years that these motions and calls were prepared

where was the information necessary to be embodied in them to be found? A. It is to be found in the Court papers.

Q. On file in the Court of Claims? A. Yes.

Q. Does the filing of these motions and calls involve the making of any entries on the dockets of the Court of Claims? A. Of course the entries on the dockets of the Court of Claims are not supposed they are not made by anybody but the clerk in the Court of Claims.

Q. Was there any entry made on any dockets in reference to these motions and calls? A. After preparing these motions and calls it is necessary to enter them and we generally enter them on our diary in the office and the entry from that diary is transferred to the docket and then the motions are taken before the Court of Claims to be filed.

Q. The same way with calls? A. In the case of calls they are taken to the Department of Justice and left with the Clerk.

Q. I ask you Mr. Newbeck whether the amounts you have
220 stated opposite the items of motions and calls in this itemized list are reasonable for the services necessary as testified to by you?

Mr. TUCKER: I object on the ground that the subject matter of the question is not the proper subject for expert testimony and on the further ground that if it is, this witness has not qualified himself to testify concerning the value of the services involved in the preparation and filing of a formal motion before the Court of Claims.

The AUDITOR: The objection is sustained.

Mr. DONALDSON: I note an exception.

Q. Will you state how you arrived at the value of the services in filing these motions detailed in this statement for instance twenty-five cents for filing motion, how do you arrive at that price? A. I estimate the time which would be consumed by the clerk who prepared such motion and upon estimating the average salary paid employees in the office of Colonel Moyers I arrive at the value of the preparation of each of the motions and calls.

Q. Is the amount set opposite each of these motions embraced in this list the result of your calculations in that regard? A. Yes.

Mr. TUCKER: I object to the question and move to strike out the answer and all testimony of this witness as to his method of arriving
at the proper charge for filing these motions and calls upon
221 the ground that the witness has in no wise qualified himself to testify upon such subject and that it appears that the items in question as answered in this question have been arrived at in an arbitrary manner and upon the further ground that the witness was not in Colonel Moyers' employ at the date when most of the motions and calls in question were filed and therefore presumably does not know the salaries of the clerks in Colonel Moyers' employ.

The AUDITOR: The objection is overruled.

Q. Directing your attention to these letters which are enumerated in this same exhibit I wish you would please state how you arrive at the estimate of value set opposite each of those items? A. Those

letters of which I found press copies are at the rate of twenty cents a page, those which I found no press copies I usually placed the minimum charge of ten cents each.

Q. One of the items to which the complainant objects is 529 letters at ten cents each I will ask you whether those are the letters found upon the records of Colonel Moyers of which there were no press copies? A. Some were and some were not.

Q. Do I understand that you only applied this minimum charge of ten cents to all letters of which there were no press copies or did that charge apply to some of which there were press copies? A. Of some I had press copies and some I did not.

Q. So that this item 529 letters embraces as well some let-
222 ter written of which there were press copies and some written of which there were none? A. Yes.

Q. I notice there are a number of items on the list to which the complainants object of letters at different prices per piece, I wish you would state whether the variety of charge depended upon the length of the letter? A. Practically all of them did.

Q. These charges are for stenography and typewriting? A. It would be impossible for me to say.

Q. Were they in typewriting? A. Yes, I won't be sure that all were, but only a few were not.

Q. Have you any idea how many? A. A very few.

Q. These charges you have made are on the basis of typewriting charges? A. They are except for the letters written in long hand.

Q. You have made allowance for those? A. I allowed for them according to the time I estimated it would take to write them.

Q. Have you any idea how much of such letter written in long hand are embraced in this list? A. Off hand I should say not more than one or two dozen.

Q. It has been suggested that Colonel Moyers wrote on the
223 typewriter? A. No, sir, he did not.

Q. Could he write on the typewriter? A. No, sir.

Q. Do you write on the typewriter? A. I do.

Q. How extensive, what part of your business does that comprise? A. I was first employed by Colonel Moyers as a stenographer.

Q. How much of time have you been employed in that work since then, how constantly? A. Of course I have practiced it ever since having entered his employ.

Q. Do you employ it every day? A. Not now. I did for a while.

Q. You don't employ your stenography and typewriting now then? A. I use the typewriter now.

Q. Are you familiar with the charges made for typewriting these letters, the letters such as mentioned in this list, by the page?

Mr. TUCKER: I object on the ground that it has not been shown that Colonel Moyers employed outside typewriter to write these letters, but it appears so far as we are able to learn that they were written by clerks in his employ whose salaries if it be material to know, have not been shown.

224 The AUDITOR: The ruling is reserved.

A. I cannot say that I am, other than the prices paid by Colonel Moyers for outside work.

Q. When was that outside work done? A. I suppose some four or five years ago.

Q. In reference to this Edmunds case? A. I could not say that it was.

Q. Do you know what it was?

Mr. TUCKER: I object as immaterial and irrelevant.

Q. Do you know where he had the work done? A. No, I do not, I know through whom he had it done.

Q. You don't know who did the work? A. No. I know through whom the work was done.

Q. What do you mean by that? A. I mean the work was given out through Mr. Carter who was at that time in Colonel Moyers employ, he had it done by an outside typewriter, probably he was also a stenographer, but whether the work was done by stenography or typewriting alone, I could not say which.

Adjourned to May 22, 1905, 2 o'clock.

CUMMINGS
vs.
CONSAUL.

MONDAY, *May* 22, 1905—2 p. m.

Hearing pursuant to adjournment.
Present: Messrs. Tucker and Consaul.

Mr. FRANCIS L. NEWBECK for further direct examination.

By Mr. CONSAUL:

Q. Referring to the defendants exhibit R. G. D. No. 1 to the items, preparing and filing briefs, please state upon what information or data you proceeded in stating the account so far as these items are concerned? A. I have examined the briefs on file in the papers of the Court of Claims and counted the number of pages in each brief and have averaged the value at twenty-five cents a page.

225

Q. Please state whether the pages of all these different briefs are of the same length or not? A. The briefs which were filed at an early period were written upon legal cap paper while those of a later period are written upon letter size paper, at what time the rulings of the Court of Claims required this change I could not say.

Q. State whether or not you allow the same price per page for the briefs covering a certain number of pages of legal cap as for certain number of pages of smaller size? A. I did not for the reason that those written upon letter size paper consist generally of an original and three copies while those written upon legal cap paper were not required to be so written to the best of my knowledge.

Q. Referring again to said exhibit R. G. D. No. 1 please state how you arrived at the facts set forth or abstracted in said exhibit whether

from personal investigation or otherwise? A. From personal investigation.

Q. Of what? A. Of the papers on file in the Court of
226 Claims and of the dockets and jackets in the office of the late Colonel Moyers.

Q. Referring to certain memorandum on complainants exhibit H. S. C. No. 2 in which fees for taking testimony are marked "unpaid," on depositions filed before the Court of Claims, please state the practice prevailing in said Court as to the filing of depositions by the Clerk where the depositions come into his hands marked "unpaid?" A. The rule in question requires the officer who takes such testimony to endorse on the packet sent to the Court of Claims the fact whether or not his fees have been paid so that the Clerk may know whether or not the depositions are to be filed in the Court or are to be held awaiting the payment of such fees. It is also provided by that rule that the officer who has taken the testimony should place inside the envelope a statement of his bill for taking the testimony and on that bill it is usually stated whether or not such fees have been paid.

Q. What if anything is required as a pre-requisite to filing depositions which come to the office of the Clerk of the Court of Claims with fees marked "unpaid?" A. It is the practice of the Clerk of the Court to notify the attorneys of record of the receipt of such depositions and of the fact that the fees thereon are unpaid and that the depositions are held until the officer's fees are paid, that they are not filed and can not be used by the attorneys in the case until such fees are paid.

Q. Please state whether or not the statement of the facts
227 set forth, contained and abstracted in said exhibit R. G. D. No. 1 are correct and is the result of your personal examination of the records? A. They are.

Cross-examination by Mr. TUCKER:

Q. When did you go into the late Colonel Moyer's employ? A. February, 1900.

Q. So that in making up this account marked R. G. D. 1 you have relied largely on the records in Colonel Moyers office which antedated your going into his employ? A. Well I have relied on such records for the reason that in each case I have had the files of the Court of Claims before me, and I have relied to some extent on the dockets and papers in Colonel Moyers office.

Q. The items for which credit is claimed in that exhibit may be classified as follows: first, examiners charges for the taking of depositions together with per diem charges to examiners, second, charges for preparing and filing briefs and calls and motions, thirdly charges for filing typewritten briefs of evidence, is such classification generally correct? A. That does not seem to embrace all the items in that account.

Q. State any other class of items? A. Such as traveling expenses of attorneys who conducted the examinations of witness,
228 writing of letters and a few other minor matters.

Q. Let us take up if you please the items classified under the heading of charges for filing motions and calls, in each instance where such paper was filed in the Court of Claims was it not filed on a blank? A. Generally it was.

Q. That is a printed blank? A. Yes.

Q. How much have you charged for the filing of such a blank as a rule? A. Fifteen cents except where they are in duplicate, then the charge is twenty-five cents.

Q. In each of those instances is the brief, call or motion signed by the attorney of record? A. Not necessarily.

Q. Who is it signed by? A. That is the custom at the present time.

Q. These motions and calls we are dealing with now? A. To the best of my recollection signed by the clerk.

Q. In the names of the attorney of record? A. Yes.

Q. So that you have assumed in making up this account that Colonel Mo[illegible]s was entitled to 15 or 25 cents every time he filed a motion or a call in the Court of Claims, which was done by the signing of a blank form and filed in the Court of Claims, is that right? A. No it is not.

229 Q. What is right with reference to them? A. I would say that he was entitled to the amounts I have stated for the work of such clerk in preparing those motions filing them, afterwards noting the replies, withdrawing them from the Court of Claims examining some of the papers referred to in such report in the War Department and in the examining division of the Treasury Department.

Q. In how many cases did Colonel Moyers do this work himself if you know? A. I don't know that he did in any instance unless he may have gone to the departments to examine papers referred to in any such reports, but of that I have no personal knowledge.

Q. You have no personal knowledge of what occurred prior to the date when you went into his employ have you? A. Well I can say that I know that such examinations were not prepared by Colonel Moyers in person, because the data contained in such motions was not entered on his docket by himself, that probably would cover my personal knowledge, of course I infer from the custom in the office at the present time, that is to say it is customary for the clerks to prepare receipt cards to withdraw papers from the Court of Claims to go to the Court of Claims and get such papers examine them with a view to obtaining the data necessary to prepare such calls and themselves make the proper entries on the diary in Colonel Moyer's office.

230 Q. Your personal knowledge of the fact set out in the question is based upon that? A. Upon the handwriting of the dockets and on the motions and calls themselves.

Q. Did you fix arbitrarily upon these charges of 15 and 25 cents per call, per brief and per motion? A. Well I have taken into consideration the time which would be consumed by the clerk in the preparation of such motion and calls and of the work incident thereto and have estimated what it cost Colonel Moyers for their

preparation based upon the average salary which I supposed prevailed in his office at that time.

Q. So you have assumed from the knowledge you have of the salaries he paid after you went into his employ that you knew what salaries he paid to his clerk prior to you going into his employ and upon this assumption you have as nearly as you could fixed these items of charge of 15 and 25 cents per motion etc? A. I have approximated the salaries of such clerk not merely from what he paid until I entered his employ, but from what was told me by one of his former clerks.

Q. Is this also true of the claims of credit in R. G. D. No. 1 with reference to briefs and affidavits? A. Well I base it not only upon that but also what would be considered in general the fair price for the typewriting in such briefs.

Q. So not all of this typewriting was done by clerks in Colonel Moyers employ? A. I could not say.

231 Q. In all these instances were the briefs or motions typewritten by a typewriter outside of his office, that is so far as the cases set forth in this Exhibit R. G. D. No. 1 are concerned? A. I could not say as to the cases set forth in this exhibit, but I know he did have typewriting done outside of the office.

Q. But you don't know whether any of these cases set forth in this exhibit were? A. No.

Q. How much did Colonel Moyers pay his clerks before you went into his employ as typewriter? A. I could not say from personal knowledge.

Q. After you went into his employ? A. Various salaries during the three years I was in his employ.

Q. How much did he pay his typewriter? A. The average salary for every year of the three years I was in his employ as typewriter I received over $100 a month.

Q. How many typewriters had he? A. Two.

Q. He paid each of them $100? A. One $100 and one $125.

Q. What was the other one's name? A. Mr. Johnston and myself.

Q. Did he have any other employees? A. During the entire time, of course.

232 Q. At any one time? A. Yes at times he had more than two.

Q. How many more? A. I do not think he had any more than four at any one time.

Q. Have you any way of fixing the proportion that the work of the typewriting on these several cases bore to the entire work of office? A. Not without stopping to think, I can think it over and probably give an answer.

Q. Did you consult with Mr. Consaul as to what credit you should claim for the typewriting of these affidavits and briefs and the filing of the motions and calls? A. I may have asked his opinion as to the value of some of those papers when I was in doubt, but I have in general stated the value of such papers not on his opinion, but upon my own judgment.

Q. In the case of letters written how much have you charged per copy? A. Twenty cents.

Q. For each typewritten page? A. Yes.

Q. As I understand it where you would simply find a reference to a letter, that in an entry on the dockets and diaries that a letter was written to such and such a person you have made a charge of ten cents? A. Yes.

Q. That without any knowledge of the length of the letter
233 of its subject matter? A. In some cases I knew what those letters were for for the reason that some had been returned unclaimed, they were in most cases letters calling upon the claimants or the parties in interest to furnish testimony to prove up the claims, and in order to write such letters it was necessary to withdraw from the files of the Court of Claims the Court papers in such cases to ascertain if such claims were worth prosecuting and also in some cases to determine to whom the letters should be written. I might add it was also necessary in preparing such letters to examine the dockets in the office of Colonel Moyers to find such names and addresses.

Q. It appears from an examination of this Exhibit R. G. D. No. 1 that there was over 500 letters of which a charge of ten cents each was made, in most instances the information that such letters were written from, came from either the diaries or the dockets in Colonel Moyers office? A. The dockets.

Q. Of that number of letters how many did you examine as returned? A. I could not say.

Q. They were all written by clerks in Colonel Moyers employ? A. They were not written by himself.

Q. Answer my question if you can? A. I could not say whether or not they were written by clerks in his employ.

Q. You have testified that the rules of the Court of Claims
234 required the prepayment of the cost of taking depositions before depositions were actually filed, am I right in this? A. The rule of the Court requires the officers to state whether his fees had been paid, of course if he made no statement on the envelope I could not say whether the Clerk would file them.

Q. Where depositions were marked "unpaid," did the Clerk refuse to file the depositions until the fees were paid? A. If it was so endorsed on the packet.

Q. When the Clerk would notify that depositions were endorsed "unpaid," would the attorney pay the charges of the examiner, and present to the Clerk a statement that such charges were paid? A. The money is usually sent through the Clerk of the Court of Claims.

Q. Is not an entry made on the docket showing the payment? A. Whose docket?

Q. The Court of Claims. A. I do not know.

Q. No record is made in such circumstances showing that the examiners have been paid? A. Not to my knowledge.

Q. You cannot testify from your knowledge of Colonel Moyers records that in these instances where depositions were marked
235 unpaid that he actually paid the examiner? A. I could not.

Q. You simply assume that he paid them because of this

practice or rule you have stated as existing in the Court of Claims? A. I assumed that they have been paid.

Q. In making your estimate of the number of pages of depositions filed you averaged it? A. They were not estimated, I counted the testimony in each case.

Q. You estimated the number of words to a page? A. I did not estimate it I counted it.

Q. Do I understand you to say that you counted every word on each page in every deposition mentioned in this exhibit R. G. D. No. 1? A. Except in those cases where I have made a charge of $3.00 which is the minimum fee fixed by the Court of Claims for taking testimony in any case.

Q. Then as I understand you in every case mentioned in R. G. D. No. 1 in which there has not been claimed a $3.00 credit for the fee to the Examiner you counted every word on every page in every case mentioned in that exhibit? A. I did.

Direct examination resumed.

By Mr. CONSAUL:

Q. Please state, with the practice of how many attorneys prosecuting war claims, are you familiar? A. I am familiar with the practice of Colonel Moyers, Colonel Snyder and the firm of Moyers and Consaul.

236 Q. For how long have you been engaged as clerk or otherwise with firms engaged in prosecuting war claims before the Court of Claims and Congress? A. Since February 1900.

Q. Please state whether or not during such experience you have become familiar with the practice among the people mentioned, as to the fees or otherwise of fees paid local attorneys, who secured witness and took the testimony locally? A. I have.

Q. Please state from the knowledge you have thus obtained what is the usual and customary share of the total fee to be paid to the local attorneys who secured the witness and took their testimony locally where the total attorney's fees in the case is to be a sum equal to 50 per cent. of collection?

Mr. TUCKER: I object on the ground that the subject matter of the question is not proper subject for expert testimony, that if it is this witness has not qualified himself to testify as an expert, to say that he was a clerk in Colonel Moyers' office or in the office of Moyers and Consaul which is the same thing or in the office of Colonel Snyder which the previous testimony has shown to be was associated with Colonel Moyers in his office.

The AUDITOR: The ruling is reserved.

A. The usual fee is from 16 2/3 per cent. to 25 per cent. of the amount recovered of the claim.

237 Q. Please state if you can in what proportion of the settlements with which you are personally familiar the share of the fee paid the local counsel for securing witnesses and

taking the testimony has been from one-third to one-half of a fifty per cent. fee? A. I would say in most of them.

Q. Please state whether or not from your observation and knowledge of settlements made by the persons before mentioned if a considerable number of the cases have been settled by them in which local attorneys received less than one-third of a total fee of fifty per cent.? A. There has not been a considerable number.

By Mr. TUCKER:

Q. How many of Colonel Moyers' cases, did you know of in which he paid local counsel per diem fees of from $10 a day up for taking testimony? A. I cannot recall to mind the names of any case which he paid such fees, I cannot recall any such case since I have been in his employ.

Q. From your familiarity with the records of his office dockets and diaries in how many cases did he pay such per diem fees to local attorneys? A. I really know of hardly any.

Q. Do you know of any? A. I could not call any to mind at present.

Q. Do you remember the case of Abraham Eichburg in which he paid William H. Jones, a local attorney $10 for the taking of testimony before an examiner? A. I do not recall that case.

238 Q. Do you remember the case of Susan Thagard in which he paid Henry S. Cook $10 for taking testimony before an examiner? A. I do not.

Q. Do you remember the case of Patrick Lynch in which he paid M. Lewis of Atlanta Georgia, a per diem of $10 for taking the testimony before a local examiner? A. I do not.

Q. Do you remember the case of Lucy A. Caldwell in which he paid Solomon Clark a local attorney a per diem fee for taking the testimony before an examiner? A. I am somewhat familiar with the case, but I do not know of his paying to any local attorney a per diem fee for taking testimony.

Q. I am reading from Colonel Moyers' own testimony as taken from page 241 of the printed record and ask you whether that refreshes your memory in reference to the case of Solomon Clark, he testified that "he appeared for me and I paid him different times for his services different sums as he would render an account, I think $10 was the usual charge," does that refresh your memory? A. I have no knowledge of that.

Q. Do you remember the case of, or in the same case of Lucy A. Caldwell of a deposition taken at — and White Altheimer appears as local attorney for the claimants and Colonel Moyers paid them $10 for their services? A. I do not know of his paying them anything for their services.

239 Mr. TUCKER: Counsel for the Complainant here refers to pages 241 and 242 of the printed record of the Court of Appeals.

Q. Do you know of any instance in which Colonel Moyers paid local attorney- a portion of the fee received by him at the settle-

ment where the case was not sent to Colonel Moyers by such local attorneys? A. I think I do.

Q. Name it please? A. Several in the appropriation of 1902 the names of which I do not recall.

Q. Can you recall one of them? A. I think there was the Quick case, the Showalter and the Mary Baker case and several others from Virginia in which he divided equally the fees he received for prosecuting the case.

Q. Were those cases sent to him by the attorney to whom he paid the fee? A. To the best of my knowledge they were not.

Q. Did he have a contract with them for the payment of fees? A. I think he did.

Q. What proportion of his fees did he pay them? A. One-half.

Q. Do you remember the size of the claims? A. I think they were nearly all small claims.

Q. What do you mean by small claims? A. Less than $500.

240 Q. Were all these cases you have named Virginia cases? A. Yes.

By Mr. CONSAUL:

Q. Please state whether or not you have examined the office records or dockets pertaining to the cases mentioned by Mr. Tucker a few minutes ago for the purpose of ascertaining whether local counsel acted in those cases and were paid in cash for their services, referring to Mr. Tucker's question as to the certain cases mentioned? A. In most of them, I have not.

Adjourned to Thursday, May 25, 1905, at 1:30 p. m.

WASHINGTON, D. C., *May* 25th, 1905—2 o'clock p. m.

Met pursuant to adjournment.
Present on behalf of the complainant, Mr. Tucker.
Present on behalf of the defendants, Mr. Consaul.

Whereupon FRANCIS L. NEUBECK, having been previously sworn and examined, is recalled for further cross examination.

By Mr. TUCKER:

241 Q. Mr. Neubeck, at the last session you testified that you counted every word on every page in every deposition you mentioned in Defendants' Exhibit R. G. D. No. 1. If this is so, will you please explain how it is that in the case of most of the numerous depositions mentioned in this list there are an even number of words; as, for instance, in the first case, that of Jones, where the number of words is given as 2400; and so on, throughout the list. A. It was my custom to make it even, after counting up. That is, I would throw off a few odd words, or put on a few more. But in making those deductions or additions I usually made them in favor of the complainant in this case.

Q. As I understand it, you did not estimate the number of words

on a page and then multiply the estimated number on a page by the number of pages contained in the deposition? A. I did not.

A. G. MAUL, a witness of lawful age, called by and on behalf of the complainant, having been first duly sworn, testified as follows:

By Mr. TUCKER:

Q. Mr. Maul, you are a member of the bar of this court? A. Yes, sir.

Q. At my request did you make an examination of the Court of Claims papers in the claims set out in the account or list that I hand you (Exhibiting to witness Defendants' Exhibit R. G.
242 D. No. 1)? A. I did; yes, sir.

Q. State briefly, but fully, the character of the examination made by you? A. Why, I had the Clerk get out all the cases mentioned in this list, and I examined all the papers and noted the character of the paper; and in the case of testimony, or briefs, or pleadings, I counted the number of pages and estimated the number of words, and I checked the items on the account as given here with the papers on file, and also got out the dockets in each case and checked them from the dockets.

Q. How long were you engaged in that work? A. I spent about four or five days. I don't remember the exact time—twenty some hours.

Q. In determining the number of pages in the various depositions that were found on file in those cases, did you observe any evidences on the depositions themselves that an examination similar to yours had been made? A. Nothing, except that on the back of the different depositions were figures corresponding with the number of pages in the deposition. As, for example, if there were twenty-six pages in the deposition, there would be on the back the figures 26, and by that multiplied 300, the usual average of words on a page; and then the balance would be struck from that, corresponding to the number given in the claim in many cases.

Q. Pencil figures? A. Yes, sir; recent pencil figures.
243 Q. Indicating that estimates had been made of the number of words on the page? A. Yes; that is what I assumed it to be.

Q. I hand you Complainant's Exhibit H. S. C. No. 1, heretofore filed, and ask you whether you prepared that list? A. I did; yes, sir.

Q. What does that show? A. This is a list of the depositions filed in the various cases mentioned in the expense account, including the per diem of the Notary and the expenses of the Commissioner.

Q. Do those credits shown in that account correspond with the credits claimed by the defendants in Exhibit R. G. D. No. 1? A. Yes; they do.

Q. I hand you Complainant's Exhibit H. S. C. No. 3, and ask you whether you prepared that? A. I did; yes, sir.

Q. What does that show? A. I might state that in the one which

was shown to me previously was the testimony taken in cases that have been dismissed.

Q. Yes. A. This is a similar list of the allowances in pending cases for testimony taken, and per diem of Commissioner and expenses of Commissioner.

Q. Do the items of expense in the list you now hold,
244 being Complainant's Exhibit H. S. C. No. 3, correspond with the credits claimed in Defendants' Exhibit R. G. D. No. 1? A. They do; yes, sir.

Q. I now hand you Complainant's Exhibit H. S. C. No. 2, and ask whether you prepared that list? A. I did; yes, sir.

Q. What does that show? A. This list shows the discrepancies that I found in a few cases in the number of words charged for in the expense account——

Q. What expense account? Please identify that. A. Filed by the defendants in this case, being Exhibit R. G. D. No. 1; and also a memorandum of two cases in which the fees were marked "unpaid."

Q. Take up each one of those items and say why there was a discrepancy such as you have mentioned? A. In case No. 6922, the item claimed for dated April 26, 1894, for testimony at Fayetteville, N. C., 20 pages, the claim was for 4200 words. Part of this was blank pages with printing, and filled in with handwriting, and the balance was all handwriting. Allowing for the printed words I could only estimate 3500 words. That would make a difference of 700 words. And in case No. 3789, there was a charge in the account for May 23, 1891, testimony at Oxford, Mississippi. This was all in handwriting, and the claim was for 25 pages, 4800 words. There were 25 pages, but not more than 4000 words. I might state that in these cases I made the estimate as liberally as I possibly could.

245 Q. Towards whom? A. As liberally as I could consistently do so towards the defendant. In case No. 3810, the item claimed for was November 20, 1889, testimony at Port Gibson, Mississippi. They claim 16 pages, 3000 words. There were 16 pages, but I could only average 2240 words, including the printing. In case No. 6852, February 4, 1895, the charge was made for testimony at Charlestown, West Virginia, 9 pages, 2700 words. There were seven and a half pages of typewriting and two blank pages filled in, and I could not estimate more than 2250 words. In case No. 6842—this is a memorandum made by me in the case just mentioned—August 6, 1891 and August 21, 1891, there were calls by Charles and W. B. King, and that there was no power of attorney filed by Gilbert Moyers until January 20, 1900; but there was an appearance by Moyers & Edmunds on February 21, 1889.

Q. Do you recall what attorneys in that cause appeared for the claimants in the taking of depositions? A. No, I do not. In case No. 4470 there is a charge, July 30, 1892, for brief on loyalty, 13 pages, $3.25. This brief is not in the papers, nor was it entered on the docket.

Q. Is the expense of making that brief claimed for in Defendant's

Exhibit R. G. D. No. 1? A. It is. In case No. 7487, on December 14, 1892, there is a charge for taking testimony at Iuka, Mississippi, 39 pages, $9.30. The fees are marked "unpaid" and signed by the Commissioner.

246 Q. Is there anything on the dockets or in the papers indicating that those fees had been paid? A. There was not; no, sir. In case No. 7960, on April 27, 1892, the charge was made for testimony of four witnesses at Brooke, Virginia, 24 pages, 5000 words, at 20 cents, $10; per diem of Commissioner, $3.00; making a total of $13.00; and there was attached to the deposition a tabulated statement of expenses of Commissioner—for Commissioner's fees, $3.00; deposition of George Dent, 1137 words, 13 folios, at 15 cents, $1.95; deposition of James Morton, $1.80; J. L. Lowry, $2.10; John Gree, $1.65; aggregating $10.50.

Q. Was that the whole amount of the claim made by the Commissioner? A. The whole amount of the claim including his fee—Commissioner's fee.

Q. That was shown on the depositions? A. It was; yes, sir. These were marked "Fees unpaid" and signed "Geo. F. Cahill, Commissioner."

Q. What was the claim for credit made for taking depositions, in Defendants' Exhibit R. G. D. No. 1? A. The total claim was $13—$10 for taking testimony and $3 per diem for the Commissioner.

Q. So that the defendants here claim credit for the taking of these depositions in excess of the amount claimed by the Commissioner on the depositions? A. Yes, sir.

247 Q. What, if any, experience have you had, Mr. Maul, in doing typewriting and in making estimates of the contents of typewritten matter? A. I have done stenographic work for about six years.

Q. Does that mean that you have done typewriting work, also? A. Typewriting and stenography, yes sir.

Q. Are you familiar with the method of estimating the number of words on pages, &c? A. Yes, sir.

Q. I hand you another list, marked "List of Pending Cases" which I ask be marked for identification Complainant's Exhibit H. S. C. No. 4, and ask whether you know anything about the preparation of that list? A. I prepared this list from information I found in examining the cases and comparing them with the expense account marked R. G. D. No. 1.

Q. The information contained in that list that you hold in your hand is made up from information gained from what source or sources? A. From the files of the Court of Claims, and from the dockets of the Court of Claims.

Q. In what cases? A. In the cases listed in Defendant's Exhibit R. G. D. No. 1.

Q. What information concerning those cases is given in that list which you hold? In other words, what was the purpose of the preparation of that list? A. The purpose in preparing this list was to

show, in the cases marked "Pending," and now pending, the
248 time that appearance was entered, if at all, by Moyers & Consaul, and the last entry in the case, and the action taken after appearance was entered by Moyers & Consaul, if any.

Mr. CONSAUL: The defendants object to the admission of this paper in evidence, or to the admission of any testimony concerning any action taken in any case involved in this proceeding subsequent to the death of Gilbert Moyers, for the reason that any action taken by any person in any of such cases before the Court of Claims after the death of said Gilbert Moyers must necessarily be wholly immaterial and irrelevant to any matter here in issue. I suppose the ruling will be reserved.

The AUDITOR: Yes. Of course the paper is not yet offered in evidence.

Mr. TUCKER: No. As I understand it, none of the papers are offered as original evidence. They are simply filed for the purpose of showing what has been done; and then if anybody wants to verify them from the original papers, it can be done. That is the only way I could think of to get at the thing.

The AUDITOR: They are offered and taken in connection with the testimony accompanying the offer.

Mr. TUCKER: Yes.

By Mr. TUCKER:

Q. That list then which you now hold, as I understand it, based upon information taken by you from the papers and dockets
249 of the Court of Claims, shows whether or not the firm of Moyers & Consaul have entered their appearance in the pending cases listed in Defendants' Exhibit R. G. D. No. 1, and the date of such appearance by such firm of Moyers & Consaul?

Mr. CONSAUL: In order to save encumbering the record with repeated objections, I suppose it would be proper to have it noted——

Mr. TUCKER: I have no objection to stipulating that the objection heretofore made shall be considered as being made to all testimony relating to the appearance of the firm of Moyers & Consaul in the various cases mentioned, without the necessity of repetition of such objection.

Mr. CONSAUL: And to the admission of any evidence relating to action taken in any of these cases since the death of Gilbert Moyers, at some time or other.

Mr. TUCKER: All right.

By Mr. TUCKER:

Q. And the list also shows, does it not, the last action taken in each of those cases? A. It does; yes, sir.

Q. Where the initials "M" and "C" are used in this list, what do they mean? A. They mean Moyers & Consaul.

Q. Is the information contained in this list accurate? A. It is, to the best of my knowledge.

Q. And is the result of an examination made by you,
250 as you have stated, of the records and files of the Court of Claims? A. Yes, sir.
Q. And the dockets? A. Yes, sir.

Mr. TUCKER: I offer in evidence all of the lists and exhibits marked respectively Complainant's Exhibits H. S. C. Nos. 1 and 4, inclusive, to be considered with the testimony of the witness.

Said papers are filed herewith, marked respectively, Complainant's Exhibits Nos. 1, 2, 3, and 4.

Cross-examination.

By Mr. CONSAUL:

Q. In making the examination of papers referred to in your direct examination, Mr. Maul, I understand that you did not take the time to count the number of words on each page of every deposition? A. No; I didn't count every word; no, sir. That is never done to my knowledge.

Q. Then the way in which you arrived at your estimates as to the number of words contained in each deposition, or lot of depositions, was to count one or two or three pages to get the average number of words, as best you could, and then multiply that by the number of pages? A. Exactly.

Q. How long did you state it took you to make this examination of all the depositions and other papers in this list of cases em-
251 braced in Defendants' Exhibit R. G. D. No. 1? A. I think it was something like 22 hours, or something like that.

Q. As you only made estimates of the number of words contained in each deposition, are you prepared to state positively that an actual count of every word upon every page would not bring about the results set forth in each case in Defendants' Exhibit R. G. D. No. 1? A. In each case or do you mean in each case mentioned in the list of cases I found in error?

Q. In the list marked Exhibit H. S. C. No. 2. A. Yes, sir.

Q. In other words, without counting the number of words in the depositions taken, you are prepared to state positively that a certain number heretofore testified to as being correct is incorrect? A. I don't know what has been testified, but I am prepared to state that the number claimed for is not the correct number of words in the deposition, because experience with stenographic work and depositions has taught me—and I think it is the general experience in that line—that a certain average taken from so many pages, making a liberal allowance, will give a fair average of the whole.

Q. Your statement, however, is a mere estimate not based upon an actual count of the number of words on all the pages, is it not? A. No, my count is not based on the actual count of each particular word on every page; no.

252 Q. Where a portion of a page was printed, and the remainder consisted of writing or typewriting, did you include the number of printed words on the page in your estimate of the number of words in that deposition? A. Yes, sir.

Q. In every case? A. I think so; yes, sir.

Q. Did you, in your examination of these depositions, relative to which you have just testified, find in any case, except No. 7960, any statement endorsed upon the deposition showing a statement by the officer who took the deposition of an account or bill for taking the deposition in an amount greater than that set forth in that particular case on Defendants' Exhibit R. G. D. No. 1? A. No; as a rule they were marked "fees paid" without anything further said as to the number of words or amount or anything about it.

Q. You say "as a rule?" A. Yes, sir.

Q. My question was whether or not you found endorsed on any of the depositions which you examined, any statement or bill of the Commissioner or officer who took the depositions which was in excess of the amount claimed for taking the depositions? A. No, sir; I did not.

Q. (Continuing:) In Exhibit R. G. D. No. 1? A. None except the one case referred to.

Q. And you found no other statements by Commission-
253 ers at all? A. Except as I have just stated, where they were marked "fees paid" and signed by the Commissioner.

Q. But no detailed statement of the Commissioner's bill? A. Not pertaining to his bill or fees, except there is one other case, I think, where it is marked "Fees unpaid."

Q. But you found no other tabulated statement, or any statement, of the amount of the Commissioner's charge? A. No, I did not.

Q. And this was the result of a careful personal examination of each deposition? A. Yes, sir.

Q. Or lot of depositions? A. Yes, sir.

Q. In order that the Court may be advised as to the care shown in your examination, I will ask you specifically if there is not endorsed upon the lot of depositions taken at Port Gibson, Mississippi, in case No. 3810, Congressional, of McAlpine, a statement of the Commissioner's bill for taking testimony, in the sum of $9.75; also endorsed "Paid by Gilbert Moyers?" A. Let me understand the question. Do you mean an itemized list of the sum, as in the case just previously referred to?

Q. Not an itemized list, but a statement by the Commissioner
of the amount of his bill, with the endorsement "Paid by
254 Gilbert Moyers" in the sum of $9.75? A. Endorsed on the deposition?

Q. On the deposition. A. I didn't see it.

Q. Would you have seen it if it had been there? A. Well, I should think I would have; yes. It might possibly have been overlooked.

Q. If you had examined the deposition you would have seen it, would you not? A. I should think so; yes.

Q. So would I. Referring to your examination of the papers in No. 6842 Congressional, shown on your memorandum H. S. C. No. 2, did you find any other work done or services performed so far as is indicated by the court papers or the docket, by any person other than Gilbert Moyers, and except the filing of calls by Charles

and W. B. King? A. I don't recollect as to that. I didn't make any note of it.

Q. You have examined defendants' Exhibit R. G. D. No. 1, and had that before you in making your examination, did you not? A. Yes, sir.

Q. Do you know whether any charge is made in that statement embracing the calls which you found to have been filed by Charles and W. B. King? A. I couldn't say without looking at the expense account. I can't remember. There were some 200 cases, and I can't remember the items in each particular case.

Q. Are you a member of the bar of the Court of Claims?
255 A. No, sir; I am not.

Q. You are not familiar with the practice of the Clerk's Office of that Court, where testimony is sent to the Clerk of the Court with the depositions marked "unpaid"? A. No, I am not.

Q. You have no knowledge, I suppose, of whether the docket of the court would indicate the payment of any Commissioner's fees if they had been paid after the depositions were received by the Clerk's Office? A. The regular docket you mean? Congressional docket?

Q. The docket of each case. A. I have none except what my observation has taught me from examination of the docket. I saw nothing of that kind on the docket.

Q. In any case? A. Not to my recollection.

Q. That is, you noticed no entries on any of the dockets that you examined of payment of any Commissioners' fees where the depositions had been received marked "unpaid"? A. No, I did not. I didn't look particularly for them.

Q. And you do not know whether such an entry would have been made on the dockets if fees had been paid? A. No.

Q. Are you a Commissioner of the Court of Claims? A.
256 A Commissioner?

Q. Yes. A. No, sir.

Q. Is your estimate of the number of words in a deposition more accurate than an actual count?

Mr. TUCKER: I object on the ground that the answer must be obvious.

A. No, sir.

The further taking of testimony was thereupon adjourned until June 1st, 1905, at 10:30 o'clock a. m.

CUMMINGS
vs.
CONSAUL ET AL.

WASHINGTON, D. C., *June 1st*, 1905—10:30 o'clock a. m.

Met pursuant to adjournment.
Present on behalf of the complainant, Mr. Tucker.
Present on behalf of the defendants, Mr. Consaul.

HORACE S. CUMMINGS, a witness of lawful age, called by and on behalf of the complainant, having been first duly sworn, is examined—

By Mr. TUCKER:

Q. Mr. Cummings, you are the complainant in this case, and the administrator of the late George B. Edmunds? A. I am.

Q. I hand you a yellow envelope endorsed "Richard W. Johnson, 3 R 334 $4,133.75/100 Cedar Creek Cumberland Co.
257 N. C. Joel C. Johnson Administrator 3 Dist," containing certain papers, and ask whether you have ever seen that envelope and its contents before; and if so, where? A. I have seen them. They were among the papers of George B. Edmunds that came into my hands as administrator of his estate.

Q. Did you receive them first as guardian of his person?

Mr. CONSAUL: I object to that question. The witness has stated where the papers were and how they came into his possession. I do not like the idea of the attorney putting the words into the mouth of the witness.

By Mr. TUCKER:

Q. State whether you received them before or after the death of George B. Edmunds? A. I received them after the death of George B. Edmunds.

Q. From whom? A. From the person who had charge of his effects in the room that was occupied by Mr. Edmunds while he was in the city.

Q. And you retained possesion of this envelope and its contents until what time? A. There were some three hundred cases and jackets with endorsements, and so on, similar to that; and I retained them until I turned them into court here.

Q. Are you familiar with the handwriting of the late
258 George B. Edmunds? A. Yes, sir; I am.

Q. Did you ever see him write? A. Many, many times.

Q. Please state in whose handwriting, if you know, the endorsement on this jacket that I have read is? A. George B. Edmunds'.

Q. In whose handwriting, if you know, is the body of the contract enclosed in that envelope, dated March 18, 1886? I refer to the written matter in the body of the contract and not to the signature of the contract. A. George B. Edmunds'.

Mr. TUCKER: I offer this envelope and its contents in evidence.

I offer the endorsement on both the yellow envelope and the blue envelope contained in it, together with the contents of the yellow envelope consisting of a paper purporting to be a fee contract between Joel C. Johnson, administrator of Richard W. Johnson, dated March 18, 1886, and purporting to be signed by Joel C. Johnson, Administrator; a letter from Cedar Creek, Cumberland County, North Carolina, purporting to be signed by Joel C. Johnson, administrator of R. W. Johnson, together with the endorsements on the back thereof; and a letter dated July 5th, 1886 to George B. Edmonds, purporting to be signed by C. R. Breckinridge, together with the endorsement on the back thereof.

Mr. CONSAUL: I object to any of these papers being admitted in evidence for any purpose, for the reason it is not shown that their existence was ever known to Gilbert Moyers, and they do not
259 come from his possession, and there is nothing on the face of these papers to connect them in any way with Gilbert Moyers.

The AUDITOR: I think we may follow the practice we have followed so far in this case and reserve the ruling.

The above mentioned papers, offered in evidence by counsel for the complainant are in the words and figures following, to wit:

(*Yellow Envelope.*)

"RICHARD W. JOHNSON.

3 R 334 $4,133.75/100
Cedar Creek
Cumberland Co.
N. C.

JOEL C. JOHNSON, Administrator.

3 *Dist.*"

(*Blue Envelope.*)

"GEO. B. EDMONDS,
Attorney at Law,
1810 *K Street, N. W.,*
Washington, D. C."

Return papers.

(Endorsed.)

"Claim 4,133.75
3d R. p. 334
Joel C. Johnson, Adm.
Richard W. " dec'd.
Cedar Creek, N. C.
(Cumberland Co.)
March 23/86 — Rec'd — returned
P/a F. A. & C. executed."

260 (*Contract.*)

"This is to certify that I, Joel C. Johnson, administrator of Richardson W. Johnson, deceased, of Cumberland County, & State of North Carolina have engaged Geo. B. Edmonds, of Washington, D. C., as my attorney to prosecute the case of Richard W. Johnson, deceased who had a claim against the U. S. Government, and in consideration of his professional services and expenses incurred by him in the prosecution of said claim, I agree to pay him the fee of fifty per cent. of the amount which may be collected thereon, and said fee is hereby made a lien on any draft that may be issued in payment of said claim.

Subscribed this 18th day of March 1886.

JOEL C. JOHNSON, *Adm'r.*

Witnesses:
W. G. HALL."

"CEDAR CREEK, CUMBERLAND CO., N. C.

Mr. George B. Edmonds.

DEAR SIR: Your- received I am the Adm'r of my Father. let me know what you charge if you succeed I can bring a monument of proof if necessary let me hear from you soon

Yours very resptf

JOEL C. JOHNSON,
Adm'r of R. W. Johnson."

(Endorsed:) "Joel C. Johnson Son & adm. Richard W. Johnson deceased. Cedar Creek Cumberland Co. N. C. R'e'd
261 3/10/86. 3 R 334 $4,133.75/100 March 12/86 Wrote enclosing P/a F/A &c. G. P. S.—The claim I have was not allowed on account of J. C. J."

(*Letter of July 5th*, 1886.)

"COMMITTEE OF WAYS AND MEANS,
HOUSE OF REPRESENTATIVES,
WASHINGTON, D. C., *July 5th*, 1886.

Forty-ninth Congress.

William R. Morrison, Chairman.
Roger Q. Mills, W. C. P. Breckinridge.
Abram S. Hewitt, William D. Kelley.
Benton McMillin, Frank Hiscock.
Henry R. Harris, Thomas M. Browne.
Clifton R. Breckinride, Thomas B. Reed.
William C. Maybury, William McKenley, Jr.
Henry Talbott, Clerk.

Mr. Geo. B. Edmunds,

DEAR SIR: Mr. Joe C. Johnson of DeWitt Ark- formerly of Sarassa Ark. writes to learn the status of his claim filed in '72 or '73 & in your hands. Amt. of Claim $6,900- & filed in the name of Kate M. Price, Adm'x- formerly wife of Mr. Johnson's father. Kindly give me any information that he may need.

Very resp'y,

C. R. BRECKINRIDGE.

(Endorsed:) July 6/86 Wrote at length & endorsing pe-
262 tition of Mrs. L. J. Eaton & request to have papers sent to War Claims Committee.

By Mr. TUCKER:

Q. Mr. Cummings, I hand you a paper taken from the files of the Court of Claims in the case of Joel C. Johnson, Administrator of Richard W. Johnson, deceased, purporting to be a petition to the Senate and House of Representatives of the United States of Joel C. Johnson, son & administrator of the estate of Richard W. Johnson, deceased, recently of Cumberland County and State of North Carolina, asking that his claim against the United States be referred to the Court of Claims, pursuant to act of Congress of March 3rd, 1883, and purporting to be signed by Joel C. Johnson, Administrator. Please examine the written matter contained in this petition other than the signature of Joel C. Johnson, administrator, and state in whose handwriting, if you know, such written matter is. A. The written matter referred to is in the handwriting of George B. Edmonds, without the slightest doubt.

It is stipulated and agreed by and between the parties hereto that there was a finding in the Court of Claims in the case of Joel C. Johnson, administrator of Richard W. Johnson, Congressional No. 6927, on January 6, 1902, for $1968.

Mr. TUCKER: I offer this paper in evidence (referring to petition above mentioned).

263 Mr. CONSAUL: I object to the admission of this paper in evidence because there is nothing upon its face, or in any evidence adduced, to connect the paper in any way with Gilbert Moyers or with his prosecution of this claim.

The paper above mentioned, offered in evidence by counsel for the complainant, is in the words and figures following, to wit:

"Petition.

To the Senate and House of Representatives of the United States in Congress assembled:

Your petitioner represents that he Joel C. Johnson, son & administrator of the estate of Richard W. Johnson, deceased, recently of Cumberland Co. & state of North Carolina a citizen of the United States, has a claim against the United States for property taken and used by the U. S. army during the late rebellion; that said claim was

presented to the Commissioners of Claims, who disallowed it on or about the — day of —— 1873, and reported it to Congress where the claim now is, being on file in the office of the Clerk of the House of Representatives that much of the testimony was *ex parte,* wrong conclusions were drawn, and if the claim were referred to the Court of Claims there would be no trouble in proving claimant's loyalty & right to recover.

Wherefore having no other remedy, your petitioner asks that said claim may be referred to the Court of Claims, pursuant to the
264 Act of Congress of March 3, 1883 (22 Stat. 485-6). And your petitioner ever prays, &c.

JOEL C. JOHNSON, *Adm'r.*"

(Endorsed:) 3446. Petition of Joel C. Johnson, adm'r Rich'd W. Johnson, dec'd, Cumberland Co., N. C., asking that his claim for property taken by and for the use of the U. S. Army during the late war, be referred to the Court of Claims, under the provisions of section one of the Bowman act. W. J. Green, M. C. of N. C. Jun- 14 1886. Referred to the Committee on *Committee on* War Claims. Filed Feb. 23, 1889."

It is stipulated and agreed by and between the parties hereto that a copy of the petition above referred to may be filed in this cause and the original paper returned to the Court of Claims with the understanding that either party, the complainant or the defendant, may produce the original at any hearing of this cause.

Cross-examination.

By Mr. CONSAUL:

Q. It never came to your knowledge, in any way, did it, Mr. Cummings, that the papers in this yellow jacket which you
265 have just examined were ever in the possession of Gilbert Moyers? A. I don't understand that.

Q. I say it never came to your knowledge that these papers were ever in the possession of Gilbert Moyers, did it? A. I never knew that they were in his possession. I knew they were in my possession, and they were turned over here.

Q. And prior to coming into your possession they were in the room which had been occupied by Mr. George B. Edmonds? A. Oh, yes; they were in two trunks, locked up and strapped up. I have the keys.

Q. When did they come into your possession? A. Oh, I can't tell.

Q. Approximately? A. Oh, I can't tell. It was after Mr. Edmonds' death.

Q. Do you remember the date of his death? A. He died, I think, about the last of October or the 1st of November in 1896.

Q. And these papers came into your possession some time after that? A. After that. I will say here that they were, in a sense, in my possession, but I did not take possession of them. That is, he

had a room and the furniture in there, and the room stayed in that condition.

266 Q. You paying rent for the room? A. No, no. They were just simply kept there. It was a little hall bedroom on F Street.

In order to avoid the introduction in evidence of all the papers and records of the Court of Claims in the case of Joel C. Johnson, administrator of Richard W. Johnson, Congressional No. 6927, it is stipulated by and between the parties hereto that there are no papers or documents on file in the Court of Claims in that case showing any connection of Gilbert Moyers with the prosecution of the claim prior to the date of filing before Congress of the petition heretofore offered in evidence at this session, and to the date of the contract between George B. Edmunds and the claimant Joel C. Johnson, administrator, dated March 18, 1886; and that the first paper among the files of the Court of Claims showing the connection of Gilbert Moyers with the prosecution of said case was the notice of appearance filed by Gilbert Moyers in the Court of Claims, June 25, 1890.

Mr. TUCKER: In connection with the testimony in this case of Joel Johnson, administrator of R. W. Johnson, attention is invited to pages 150 *et seq.* of the printed record in this cause in the Court of Appeals.

I hereby request the defendants to produce at the next session hereof, any fee contract or power of attorney if any such exists, between the late Gilbert Moyers and the claimant Joel C. Johnson, administrator.

C. C. TUCKER, a witness of lawful age, called by and on
267 behalf of the complainant, having been first duly sworn, testifies as follows:

The WITNESS: I produce, and file on behalf of the complainant herein, eleven typewritten pages containing a list of claims, two of which are marked "Exhibit A. Cases in Edmonds' schedule which belong to other attorneys or were received by Moyers from them." Eight of which are marked "Exhibit B List of Edmonds cases;" and one of which is marked "Exhibit C, List of cases not in court or on Moyers' books, and which are in the schedule, attached by complainant to the agreement between Moyers and Edmonds."

These exhibits are copies of the original exhibits produced and filed by Gilbert Moyers, deceased, or by his solicitor Mr. Birney before the auditor in August, 1900, and referred to in pages 222 *et seq.* of the printed record in this cause in the Court of Appeals, the originals of which have been lost or mislaid and cannot be found in the files of this cause. The Exhibit B is referred to in the Auditor's report filed August 20th, 1902 (page 204 of the printed record in this case) in the following language:

"In the reference the defendant presents a list of claims in which he states that Edmonds was interested. This list is filed and marked "Auditor's Exhibit B."

These copies of these three exhibits were the copies furnished me

at the time of, or shortly after the filing of the original exhibits by Mr. Birney, the then attorney of Gilbert Moyers, deceased.

Mr. CONSAUL: I object to the admission of any of these
268 papers in evidence for the reason that it has not been shown that these papers are true, full and correct copies of the original exhibits filed on behalf of Gilbert Moyers in this case.

The papers above referred to, offered in evidence by counsel for the complainant, are in the words and figures following, to wit:

269

EXHIBIT A.

Cases in Edmonds' Schedule Which Belong to Other Attorneys or Were Received by Moyers from Them.

500	Neeley–Asken, Admr.	McPherson, att'y.
703	Hough	King
711	Fornshill	De Putnam
949	Jos. H. Trice	Francis
2391	Covington	Pennebaker
3144	Dan Coleman	Black
3307	Blanton	McPherson
3493	D. A. Browden	Kent
3717	Harris	Knut
3894	Baylor	Black
3898	Show	"
4295	Sol A. Miller	"
4327	Poll	McPherson
1163 4452	Goodloe	Black
4463	Sheftall	Clark
4475	Russell	Dye
4487	Cornwell	King
4506	Fields	Clark
4507	Sheftall	Clark
4508	Parker	Clark
4711	John L. Roberts	Black
4794	J. J. S. Martin	King
4923	Silas Boxley	Black
5806	Jos. Smith	"
5998	Jas. M. Thompson	"

270

6015	Jos. B. Mann	Geo. A. King
6589	J. A. Parker	Benjamin
6690	Martha Price	Black
6770	Daniel Brown	Bullock
6813	Geo. N. Cockrell	Graham
6817	John Engleman	"
6825	M. E. Jones	McPherson
6830	S. B. Martin	Taylor
6834	Nicholas Rawlins	Balew

6842	A. J. Veal	Kings
6846	Thos. Quarterman	"
7421	Thos. Dye	Brandenburg
7590	E. A. Dunn	Kings
7768	Thos. B. Paine	Benjamin
8170	J. N. Hugelsby	Block
8349	Hattie Black	
8635	W. D. Hemp	Graham
8643	W. T. Fauber	"
8902	McFarlan	Snyder
8853	Dan'l L. Smith	"
8982	W. H. Whitaker	"
9518	John H. Williams	Black

271

Exhibit B.

List of Edmonds Cases.

1185	Sarah Allen, W. W. Allen & Elam, Admr.	Pending
6835	Rich. Anderson, John R. Fauver, devisee	" M & E
3647	Juline Anganar	" "
4467	W. R. Abbott	Dismissed
1129	Edward H. Allston, Mary Allston, Widow	Pending
1137	Sarah Ambrose	do
2130	Jane M. Anderson	Dismissed
3491	Chris Buntone, W. R. Clayton, son-in-law	Pending
4490	John Baker	do
3494	John A. Browning	do
6839	Pleasant Baker, Wm. H. B., son	Dismissed
4494	Patrick Brady, Alice Brady, Adm	Pending
1835	Isaac Bloom. No. 8289	Dismissed
6965	Francis Bouligny	Pending
4857	Charles W. Belknap, J. Kate Whitmore	do
5108	John Brewer	do
8252	James C. Ballance, Mary E. English, Extx	Dismissed
8372	Sarah A. Beckham	Pending
6807	William C. Battle	Pending
6874	Lucy Breeden	do
4829	John F. Bell	Dismissed
3368	Isaac V. Burns, Mildred W. Payne, daughter	Pending
3496	Asa Braswell	do
4503	Thomas Brigham, Susan B., Widow	do
6814	Elias Brubaker	do
8335	Oliver Bartley, U. T. Bartley, Admr	Pending
6822	Jessie L. Bryant, J. G. Bryant, son	Pending

272

4923	Silas Boxley, Martha L. Boxley, Admx	Dismissed
6804	Margaret Bloodworth	Pending
6837	John H. Bray	do
4486	Benjamin Bowman	do

4456	Solomon Beery	do
5849	Henry Badon	do
6685	Zach. Belue	do
6829	Carter Carr, Francis C., widow	do
4500	Martin Caulfield	Dismissed
4487	Andrew Cornwell	Pending
6832	Jeff. J. Caffrey	Pending
6841	Michael Carwell	Dismissed
6968	Sarah Cagle	Pending
6923	Wm. R. Clark	Dismissed
2028	Lucy N. Caldwell, L. J. Eaton & Clifford C.	Pending
6931	Elizabeth Covington. 9768	Dismissed
6920	Esadore Cohen	Dismissed
4469	Joseph Clink	Dismissed
6819	John Cook, W. L. Cook, son	Pending
5109	Martha Crane	do
6894	Pat H. Flanigan	Dismissed
6797	Early Cleveland, Thos. G. Scott, Admr.	Pending
6820	Susan Carrier	Dismissed
6800	Thos. Clements	Pending
6823	Wm. E. Carhart, Finding of facts, no amt.	Dismissed
6848	Josiah Chambers, J. R. C. Admr.	Pending
3191	B. F. Childry, Mrs. B. F. widow	Dismissed
6810	Zach F. Calbreath	Pending

273

4441	Samuel Cline	Pending
6882	Ballard D. Dean	Dismissed
6915	John Davis, Jr.	Pending
6691	Hugh Dobkins, Hannah, wife	do
9903	Daniel Dougherty	do
6821	Susan Davis	Dismissed
6828	Celestine Dauterine	Dismissed
6901	Harry Durham	do
6811	Peter Elinger	do
6916	Marcellus J. Edwards	Dismissed
6803	Zachariah H. Elliott	Pending
6890	Joel L. Easterlin	do
1762	Jas. E. Elan	do
1759	Abraham Eichberg	Dismissed
6847	Jane Edge	Pending
6880	John J. Fearington	Pending
4513	Rebecca D. Fulton	do
4455	Samuel Fetzer	Dismissed
8552	J. B. Fauver	do
4460	John H. Funkhauser, Eph. Baker, Admr.	Pending
4489	Noah H. Funkhouser	Dismissed
4442	Harrison Fauber	do
3659	E. P. Ferreira, widow	Pending
1673	Samuel Fitzhugh	do
6815	John B. Ferguson	Pending

1201	Henry Fitzhugh, Samuel Fitzhugh, Admr...	Allowed
4461	John W. Fletcher.....	" $231
6798	Matthew T. Farley, Larkin Farley, Admr...	Pending

274

711	John Fornshil	Pending
6811	Daniel Goldfineh	do
4059	Balenger Gravely	do
1189	J. A. Griffith, widow of John Griffith.....	do
6826	John J. Gardner.....	do
6840	Samuel Clink	do
1163	Benton H. Goodloe.....	Dismissed
6852	Phil Gordon	Dismissed
6875	John G. Grant, J. F. Grant, Agent.....	Pending
6792	Benjamin Haygood	do
6918	Maraduke Howard	do
6919	Freeman Hines	do
3390	Jos. E. Higan.....	do
6799	Hiram Howe, J. W. Howe, Admr.....	do
6928	Arthur J. Hill.....	Dismissed
6904	Micajah Hardesty, Holland Hardesty, Wid...	Pending
4474	Emanuel H. Hoover.....	Pending
7810	W. T. Hurt, F. D. Hurt, Exr.....	Dismissed
6885	R. C. Hamer, J. H. Hamer, E. L. Thompson & R. P. Hamer, Executors.....	Pending
4458	John T. Hottel.....	do
6907	Jas. H. Hyatt, W. H. Hyatt, son.....	Dismissed
6825	Mary E. Jones Tutrix Fanny Burgess.....	Pending
6875	Rich. Jordan	Pending
6895	Jos. J. Jordan.....	do
6947	David B. Johnson.....	do
6801	Wilkins W. Jackson.....	do
1131	Martha Knowls	do

275

1857	Craven J. King.....	Pending
3361	Andrew Kramer	Dismissed
6892	Jos. Lawrence, Elizabeth Lawrence, Admx...	Pending
6888	R. S. Lipsey.....	do
3768	Wm. T. Lamb.....	Dismissed
3753	Patrick Lynch, Annie L. Hamilton, daughter	Dismissed
6787	Jordon Lyon	Pending
6812	Peter Lynch	Dismissed
4493	Morgan Layton	Pending
3367	John Lowry	Dismissed
8340	Willis Long	Pending
6889	Leonadas Lowry	Pending
3839	Jas. Morrison	do
6883	Hugh Murdock	do
8370	Avery Marrs	Dismissed
6806	Feelding F. Mathews.....	Pending

6935	David W. Morton	do
3810	John F. McAlpine	Dismissed
3333	Arch S. McNeil. No. 5151	Pending
3823	John McKinnie	do
6922	Hector McMillan	Dismissed
6877	May & Francis Morton	Pending
6787	Tilman Niblett	do
6887	May O'Caine	do
6898	Drury Partin	do
6924	John D. Phifer	do
3867	Andrew J. Pellicer	do
6933	Wm. J. Porter	Dismissed
6906	Eliza Parker	do

276

6795	Gabriel Parker	Pending
6790	Pinkening Parson	do
6808	Jackson Bush	do
6805	Benjamin F. Reeves	do
7157	Isaac Roberts	Dismissed
1332	Jas. L. Roanes, Dis. 9354	Dismissed
4454	Samuel Roller	Pending
4480	Eliz. Richardson	do
4100	Drury Robertson	do
6905	Maria R. Royster	do
1184	Susan Richardson	Pending
6853	Wm. Rutherford	do
4111	Thos. Ryan. 370	Allowed
1915	Andrew W. Stafford	Pending
8341	John Sours	Dismissed
1861	John W. Stallings	Pending
1837	Alvis Stafford	do
6824	Geo. W. Spotts	do
6872	Philip B. Schwartz	Pending
6873	Elizabeth Slingleton	do
4491	Thorogood Stubbs	do
4507	Solomon Shefall	Dismissed
6856	Sarah Spyker	Pending
6833	Thos. K. Smith	do
4499	Herbert Smith	do
6900	Jacob Surratt	do
6932	John S. Sugg	do
6926	Susan Thagard	Dismissed

277

5998	Jas. M. Thompson	Pending
6936	Nancy T. M. Tooley	Dismissed
6879	Nelson T. Thompson	do
4643	Minerva Tilley	do
4159	William Taliferro	do
6902	Nath. K. Thornton	Alld. $670

6896	Jabith N. Townsend	Pending
6891	Jacob Utley	do
6802	Thos. G. Verdine	do
6849	George Von Waldener	do
4052	M. W. Verning	Pending
6842	Allen J. Veal	do
6793	Abraham W. Weaver	Dismissed
1907	Charles T. Weston	Dismissed
4468	Samuel H. Wampler	Pending
7609	Wm. W. Willis	Pending
4999	Lowry Williams	Pending
7959	Horatio Woodward	Dismissed
4190	Wm. R. Wellborn	Allowed $250
6845	Larkins Welcher	Pending
4195	John White	Dismissed
3367	Jos. A. Weatherby	Dismissed
6794	Mary Wellmaker	Pending
6854	Martin Wendeker	Pending
6884	Julia C. Watson	Pending
4473	Noah C. Wenger	Pending
6897	Jarvis M. Williams	Pending
4479	Curtis Yates	Pending
5848	L. D. Aldrich	Dismissed

278

7484	Jeff Barnett	Dismissed
6917	Josiah L. Bell	Pending
5842	G. W. Bane	Pending
6818	John R. Buchanan	Pending
6855	Zadock C. Baker	Dismissed
6838	Jas. A. Carden	Dismissed
6930	J. S. Dey	Pending
3962	Mary A. England	Dismissed
6878	Joseph R. Franklin	Pending
6844	John Ficken	Dismissed
7451	Alex. K. Leonard	Dismissed
7487	James Hahan	Dismissed
4088	Ann. M. Ragsdale	Dismissed
3412	Thos. Shelby	Dismissed
3431	Ezra B. Towne	Dismissed
2210	Eliz. M. Chappel	Pending
1962	Mattie H. Jarnigan	Dismissed
3838	Silas Martin	Pending
4826	Jos. Hudwell	Pending
6025	Thos. J. Walsh	Pending
3348	John Cox	Pending
7465	J. I. Drumgoole	Dismissed
1963	Estelle Chichester	Pending
8383	A. A. Fambro	Pending
4470	George H. Ponder	Dismissed
7661	Antoinette Walsh	Dismissed

3345	J. Hopkins	Pending
7960	James L. Lowry	Dismissed
3359	Allen W. Hicks	Dismissed

279 EXHIBIT C.

List of Cases not in Court or on Moyers' Books and Which Are in the Schedule Attached by Complainant to the Agreement between Moyers and Edmonds.

1	Brown, Irma, John Moeben, Admr.	9 R	100 La.
2	Claud Jason	9 "	62 Ga.
3	Jones, Mrs. H. M. Extrx. Nelson B.	2 "	116 Miss.
4	Langdon James L.		
5	Morton Simeon L.	9 "	84 Ga.
6	Nash Thomas E.	9 "	84 Ga.
7	Slatlerly John, Philip Fogarty, Admr.	9 "	165 S. C.
8	Smith Joseph A.	2 "	147
9	Temple Cynthia A.		
10	Trice, Wm. B., James A. Trice, Admr.	5 "	49 Ga.
11	Tarver Robert	3 "	318
12	Welsh Mary	7 "	117
13	Warren Thomas	8 "	262
14	Wilkinson Laura E. (Algernon L. for heirs)	9 "	23 Ala. McPherson, Att'y.
15	Woodard Orris	10 "	350 Barred.

280 C. F. CONSAUL, a witness of lawful age, called by and on behalf of the complainant, having been first duly sworn, is examined—

By Mr. TUCKER:

Q. Mr. Consaul, you are Charles F. Consaul, one of the administrators of the late Gilbert Moyers, and one of the substituted defendants in this cause, are you not? A. I am.

Q. As such administrator and substituted defendant, you are claiming credit for certain expenses alleged to have been incurred by your intestate, Gilbert Moyers, in the prosecution of certain pending causes, set out in Exhibit R. G. D. No. 1, and also set out in complainant's Exhibit H. S. C. No. 3; is that right? A. My co-administrator and myself, as substituted parties defendant in this cause, under the provisions of the decree of the Court of Appeals of this District, are claiming credit for compensation from the estate of George B. Edmunds for expenses incurred by Gilbert Moyers in the prosecution of cases embraced in Exhibit R. G. D. No. 1. As to what is embraced in complainant's exhibit mentioned, I am not prepared to state without examination.

Q. As administrators of your intestate, Gilbert Moyers, are you and your coadministrator, Miss Ida Moyers, now prosecuting the

pending cases referred to in Exhibit R. G. D. No. 1, or any of them? A. Most assuredly we are not prosecuting any claims as administrators of Gilbert Moyers, for the very good reason that it would be impossible to do so.

281 Q. Are you prosecuting any of these pending cases referred to, as an individual, or are you and Miss Ida Moyers prosecuting any of those claims as individuals? I refer now to the pending claims mentioned in Exhibit R. G. D. No. 1. A. Let me see that exhibit, please. (After examination:) The firm of Moyers & Consaul, composed of Ida M. Moyers and myself, have so many cases on our docket, that I cannot remember off hand, the names of all of our clients. I recognize the claim of David B. Johnson, on page 5 of that exhibit, which was recently won on motion for a new trial on loyalty, since the death of Colonel Moyers, and which the firm of Moyers & Consaul is now prosecuting before the Court of Claims. Without taking the time to look through all of this exhibit, I suppose there are other claims now pending that are covered by that exhibit, and which are represented before the Court of Claims by the firm of Moyers & Consaul.

Q. The firm of Moyers & Consaul is comprised of yourself and Miss Ida Moyers, the daughter of the late Gilbert Moyers, is it not? A. As I have just stated, it is.

Q. Were both of you in the office of Gilbert Moyers before his death and did both of you assist him in the prosecution of claims in the Court of Claims? A. We were both associated with him prior to his death and assisted in the prosecution of various claims.

Q. How long were both of you associated with him in his office prior to his death? A. Ida M. Moyers had been associated with Gilbert Moyers for some years prior to her admission to the

282 bar, beginning as early, I suppose, as 1895 or 1896. I first became associated with Gilbert Moyers in the prosecution of claims commencing January 1st, 1902.

Q. I ask your attention to complainant's exhibit H. S. C. No. 4 "List of pending cases" and ask you to examine the references to the cases in that list, where it appears to be entered that your firm of Moyers and Consaul are prosecuting any of such claims, and ask you to state whether you are now prosecuting such claims? A. Before proceeding any further along this line of inquiry, I object to making any further answer with regard *with* any present connection of the firm of Moyers & Consaul to any of these cases mentioned, for the reason that it is utterly and absolutely immaterial to this case who represents the claimants since the death of Gilbert Moyers. I have answered the questions up to the present time as propounded, thinking that some materiality might, by a possibility, develop; but I decline to go any further into the matter.

Mr. TUCKER: It seems to me it is extremely material, if the Auditor pleases.

The AUDITOR: Do you want me to rule on this?

Mr. TUCKER: No, I do not, because I do not want to have to argue this case more than once.

The AUDITOR: He states that he declines to answer.

The WITNESS: I will not answer the question unless I am ordered to do so by the Court, for the reason that no claim is made in Exhibit R. G. D. No. 1 for any expenses incurred subsequent to the death of Gilbert Moyers.

283 Mr. TUCKER: I ask the Auditor to require the witness to answer the questions propounded to him.

The AUDITOR: That is going to entail an argument by counsel, as to the materiality of these questions, and the answers sought to be elicited.

Mr. TUCKER: That is true.

Mr. CONSAUL: I may say this. If it is desired to have this argued with a view to any further examination of myself in the near future, it had better be done immediately, because I have an engagement to take testimony next week in the south.

After argument:

Mr. TUCKER: I will ask Mr. Consaul this question.

By Mr. TUCKER:

Q. Mr. Consaul, have you any reason to doubt the accuracy of the information contained in complainant's Exhibit H. S. C. No. 4? A. I do not know what is contained in it.

Q. Look at it, and tell me. A. I have no reason to either believe or disbelieve.

Q. That is, so far as the information relates to the prosecution of claims mentioned in that list by the firm of Moyers & Consaul? A. So far as the said exhibit makes any statements as to the connection of Moyers & Consaul with said cases, one way or the other, I refuse to answer the question, or to express any opinion, because it is immaterial.

Mr. TUCKER: I offer in evidence the records and papers and docket entries of the Court of Claims in all of the cases named

284 in complainant's Exhibit H. S. C. No. 4 in which it is stated in said exhibit that Moyers & Consaul appear for the claimants for the purpose of showing the fact that they are prosecuting such claims as attorneys for the claimants; such dockets, papers and records of the Court of Claims to be considered in connection with said Exhibit H. S. C. No. 4.

Mr. CONSAUL: I object to the introduction of any of these papers mentioned, in evidence, because of their utter immateriality to the case at bar, for the reason that the firm of Moyers & Consaul are not administrators of the estate of Gilbert Moyers, though the members of that firm individually do happen to be such administrators, and for the further reason that the inquiry now before the auditor is in the matter of expenses incurred by Gilbert Moyers in the prosecution of various cases alleged to be Moyers-Edmonds partnership cases, and there is no inquiry before the Auditor as to expenses incurred by any one save Gilbert Moyers, and as these papers, if admitted in evidence, could prove nothing at all material to this cause.

The AUDITOR: The ruling on that will be reserved.

Mr. TUCKER: I have finished, if the auditor please, with the exception of proving the identity of those signatures.

G. W. Z. BLACK, having been previously sworn, is recalled as a witness for the defense:

By Mr. CONSAUL:

Q. Please state, Colonel Black, whether or not you have had any experience in securing the reference by Congress to the Court
285 of Claims of Southern Claims Commission rejected cases, under the Bowman Act? A. I have had more or less experience ever since the Bowman Act became a law.

Q. Can you state whether you have, yourself, secured, or been instrumental in securing a reference of either a small number or a considerable number of such cases? A. Well, I have had referred under that law several hundred cases; I cannot state how many—probably as many as a thousand cases or more.

Q. Please state whether there is more than one method which may be pursued by a claimant, or his attorney, in securing such reference? A. Well, there is no specific method, and no rule. In some instances the cases are referred on a bill; in other cases they are referred on petition; and in other cases they are referred at the request of a member of Congress. It has been my course, in recent years, to file a petition in Congress, which would go to the Committee on War Claims, and on that petition I would secure a reference of the case to the Court of Claims. I remember an instance which occurred——

Mr. TUCKER: Oh, no. I object to this. I object to the witness telling us of instances, as absolutely immaterial and irrelevant.

The AUDITOR: I do not think it is necessary. The fact is the records show those different methods.

The WITNESS: I did not complete my sentence.

The AUDITOR: It is not necessary to cite particular in-
286 stances, Colonel Black.

Mr. TUCKER: What is the purpose of the testimony? I may admit it.

Mr. CONSAUL: I am going to show that where a petition is filed for the reference of a case under the Bowman act, and the reference is not had during the Congress in which that petition is filed, that that petition dies just as a bill dies, with the end of that Congress, and that the claim will not be referred on that petition at a subsequent Congress; and that is just the fact in this case. This petition was filed before Congress in 1886, and the reference to the Court of Claims was not had until February 19th, 1889, three years nearly subsequent, which shows that the reference was secured at a Congress subsequent to the one in which that petition was filed, and therefore this case was not referred——

Mr. TUCKER: What is the materiality of that? What difference does it make? The purpose of offering this petition in evidence was simply to show that Mr. Edmunds was connected with the prosecution of this claim back about the time he had the contract with the claimant. I do not pretend that he did anything afterwards.

Mr. CONSAUL: But in this case the only thing on the record to connect him with this claim is this petition which died before Con-

gress and there is nothing to show even that Gilbert Moyers ever had notice——

The AUDITOR: I understand all that. That has been pretty well talked about all through this case; and I have never con-
287 sidered the evidence offered as to the original connection of Mr. Edmonds with these cases as anything more than to show that they were at certain times in his hands.

After argument:

Mr. TUCKER: Go on, Mr. Consaul. I will not object to another question you ask Colonel Black. I will let you go on and finish with him.

Mr. CONSAUL: I am trying not to ask leading questions.

Mr. TUCKER: Lead him. I will not object.

The AUDITOR: He was answering the question and after saying that there were, generally, three different methods that were pursued, he undertook to go into individual instances.

Mr. TUCKER: That is what I really objected to.

By Mr. CONSAUL:

Q. Colonel, please examine the file mark on this petition to Congress, purporting to be signed by Joel C. Johnson, administrator, and if you can tell from that file mark, state when that petition was presented to Congress? (After examining paper.) A. I have examined the paper with the endorsements thereon, and it would seem from the same that this was presented June 14, 1886.

Q. Please examine the order of the Committee on War Claims on file in case No. 6927, Congressional, before the Court of Claims, and state when said claim was referred to the Court of Claims? A. The reference of this case to the Court of Claims is February 19, 1889. I would state, parenthetically, that we are always governed by the date in the body of the letter.

288 Q. Please state whether a petition praying reference of a case will remain in effect, or life, from one Congress to another, where the desired reference of a claim is not made during the Congress before which the petition is presented? A. If the petition is not acted upon it dies at the end of the Congress to which it is presented.

Q. Where a claim is referred to the Court of Claims by request, as you mentioned a few minutes ago, does that request go to the Court with the papers, if you know? A. I do not know that it does. I never saw such a request.

No cross-examination.

Mr. TUCKER: I move to strike out all the testimony of the witness on the ground that it is utterly immaterial and irrelevant, as the paper concerning which the witness was examined was simply offered in evidence to show the connection of George B. Edmonds at a date earlier than Gilbert Moyers' connection with the prosecution of the claim in question.

It is admitted by counsel for the complainant that Colonel P. E. Dye, heretofore examined as a witness in this cause, will testify to the same effect as the preceding witness, Colonel Black; the com-

plainant, however, objecting and excepting to the materiality and relevancy of such testimony on the ground heretofore set forth.

Counsel for the defendant here produces from the records of the Court of Claims the depositions of Thomas H. Hall, *et al.*,
289 in the case No. 3810, Congressional, before the Court of Claims, John R. McAlpine *vs.* United States, being the third case mentioned in complainant's Exhibit H. S. C. No. 2, such deposition containing the following certificate of the Commissioner before whom the depositions were taken: "My fees $9.75 paid by Gilbert Moyers. T. J. Shelton, Jr., Commr."

F. L. NEUBECK, recalled on behalf of the defendant, is examined.

By Mr. CONSAUL:

Q. Please state whether or not you are a member of the Bar of the Court of Claims? A. I am.

Q. Do you hold any appointment under that Court? A. I was appointed Commissioner of the Court of Claims in February, 1902, and have held that office since.

No cross-examination.

The further hearing of this cause was thereupon adjourned until Tuesday, June 6th, 1905, at 1 o'clock p. m.

CUMMINGS
vs.
CONSAUL.

TUESDAY, June 6, 1905—1 p. m.

Hearing pursuant to adjournment.
Present Mr. Donaldson and Mr. Tucker.

Mr. JOHN C. ECKLOFF having been sworn testified as follows:—

290 By Mr. TUCKER:

Q. Mr. Eckloff you are cashier of the Second National Bank in this city, are you not? A. I am.

Q. And have been so for how many years? A. Since April 1893.

Q. How long have you been engaged in the banking business? A. Since 1887.

Q. What if any experience have you had in your banking experience *were* passing upon the genuineness of signatures and handwriting or in comparing handwriting and signatures?

Mr. DONALDSON: I object to any examination along this line because it is wholly immaterial.

The AUDITOR: The ruling is reserved.

A. Since I have been cashier, all questions of signatures where there has been any questi n it is referred to me, previous to the time I was made cashier, my experience has been as paying and receiving tellers and have passed upon all signatures.

Q. Have you had much or little experience in this line? A. Any

question that comes up in the Bank, I take the responsibility of settling all questions arising on questionable signatures in the bank, I have had daily experience since I have been cashier.

291 Q. I hand you a paper heretofore offered in evidence being a petition taken from the files of the Court of Claims in the case of Joel C. Johnson administrator of Richard W. Johnson and I hand you also a paper heretofore offered in evidence found among the effects of the late George B. Edmunds purporting to be a fee agreement dated March 18, 1886. On each of these papers is contained what purports to be the signature of Joel C. Johnson, Administrator. I ask you to examine the two signatures on these two papers and state your opinion as to whether the signatures were or were not written by the same person?

Mr. DONALDSON: This particular examination is further objectionable because it has not been shown that either of the papers were written by Joel C. Johnson and that they are incompetent, irrelevant and immaterial.

A. I should say that both of these papers were written by the same person.

Q. Is that your opinion? A. Yes, that is my opinion.

Q. Now I will ask you to again look at these two papers and examine the written portions of both papers other than the signatures thereto and state whether in your opinion such written portion exclusive of the signatures were or were not written by the same person? A. I should say that they were filled in by the same person.

Mr. DONALDSON: I object to this witness' testimony as not having sufficiently qualified as an expert.

292 Cross-examination by Mr. DONALDSON.

Q. When did you last see those papers? A. I saw them I don't know whether it was yesterday or the day before, but I think it was yesterday.

Q. You don't know Joel C. Johnson? A. No.

Q. You never saw him write? A. No, I am merely stating my opinion from an examination of the papers.

Q. Your idea is that the written portion of the body of the papers were written by the same person? A. Yes.

Adjourned for argument to Thursday, June 15, 1905, at 10:30 A. M.

CUMMINGS
vs.
CONSAUL.

THURSDAY, *June* 22, 1905.—10:30 a. m.

Hearing pursuant to adjournment.
Present Messrs. Tucker and Donaldson.

Major WILLIAM E. HARVEY is recalled.

By Mr. DONALDSON:

Q. Mr. Harvey, I will not stop to ask you any questions as to your business, etc. for I believe you have already sufficiently qualified, what in your judgment is the fair and reasonable value of the services in making these motions and calls in war claim cases
293 in the Court of Claims?

Mr. TUCKER: I object to the question on the ground that the defendants are not entitled to credit for the expenses, if any, of the filing of motions and calls, such as are referred to as the same are a general office expense of Gilbert Moyers deceased and also upon the ground that the work and labor of preparing motions and calls would necessarily depend upon the nature or character of the case in which the motion or call was filed and also upon the exact character of the motion or call, its length, etc.

Mr. DONALDSON: I mean as a general average.

A. That is a very difficult question to answer, without knowledge as to who is to make the call and whether it involves any legal discriminations. Speaking from my own experience I would say that the work can ordinarily be done by a skilled clerk, in a very large proportion of the cases such a skilled clerk can obtain the necessary data on which to base a call prepare the call, and file it in about half an hour, not less than that. I think that in the general run of cases that are not complicated fifteen cents would probably cover the cost of preparing a call and filing it. There are however in these war claims, cases in which it is difficu to find the data necessary to make the call. There are a number of different tribunals where the papers may be found and in these cases hours and even days may be consumed in finding the proper office on which to make the call. I therefore say that taking the general run of cases which are not complicated a charge of fifteen cents
294 would be reasonable and proper. This is based on the time of a skilled clerk.

By Mr. TUCKER:

Q. Do you know what Mr. Moyers paid his clerks? A. I do not.

Q. Your answer then is based on what you would pay a clerk, a skilled clerk such as you mention is it not? A. Yes.

Q. Is there any reason so far as you know why Mr. Moyers could not have made these calls himself?

Mr. DONALDSON: I object as manifestly irrelevant.

The AUDITOR: The objection is sustained on the ground that it is not proper cross-examination.

Mr. TUCKER: I note an exception.

Q. Is there any reason why where an attorney has a number of claims under prosecution in the Court of Claims he should not make these motions himself but employ a clerk to do it?

Mr. DONALDSON: I make the same objection.

The AUDITOR: I sustain the objection on the same ground as before.

Mr. TUCKER: I note an exception.

Q. Have you ever employed a clerk and paid him for making these motions and calls? A. Our firm employs a clerk who does that work.

Q. Does this particular kind of work solely? A. No, not solely, assuredly not.

Q. Have you ever had occasion except in this case to con-
295 sider what would be the reasonable charge for making motions and calls in the Court of Claims? A. No.

Q. Do you know what charge has been made in this particular case for making these motions and calls?

Mr. DONALDSON: I object.

A. Yes, I think I know I don't know that I know what charge has been made, but I think I have been told what another witness has testified to.

By Mr. DONALDSON:

Q. What salary is paid the skilled clerk in the employ of Messrs. King of whom you spoke?

Mr. TUCKER: I object as wholly irrelevant and immaterial.

The AUDITOR: The ruling is reserved.

A. We pay at the present time a clerk who is competent to make calls in the general run of cases without dispute $12 a week.

Mr. JOHN A. SWEENEY, having been sworn testified as follows:—

Q. Please give us your name, residence and occupation? A. John A. Sweeney, occupation Stenographer and residence 113 8th Street, S. E.

Q. Do you hold any office in this Court? A. Examiner in Chancery and attorney at law.

Q. I believe you are a court reporter? A. I have done court work, a great deal of it.

296 Q. You are generally engaged in the business of stenographer and Court Reporter? A. Yes.

Q. How long have you been so engaged? A. Ten years.

Q. During that time have you had much or little experience? A. I have had a fair amount of experience.

Q. You may state whether or not you have been devoting your time generally to that business? A. I have.

Q. What is a fair and reasonable value of the service of transcribing briefs on legal cap paper to be filed in the Court of Claims?

Mr. TUCKER: I object to the question first on the ground that is too vague and indefinite in that the question is as to what is the cost of transcribing briefs and is utterly incompetent on the ground that the cost of typewriting briefs for which credit is claimed was a general office expense of the decedent Gilbert Moyers and his estate is assuredly not entitled to have such a credit, especially as it is not shown that such work was done outside of the office of the said decedent.

A. For taking dictation in shorthand and transcribing into typewriting such work as briefs the customary charge is about 15 cents a folio including the shorthand and typewriting work.

297 Mr. TUCKER: I object and move to strike out the answer of the witness on the further ground that the briefs in question were not dictated to a stenographer.

Q. How many folios are there on a legal cap page? A. There are three folios on a legal cap page of such work as briefs.

Q. What would be the fair and reasonable value of like service in reference to briefs on letter size paper counting the original and three carbons?

Mr. TUCKER: I make the same objection.

A. Why, I would say that letter size sheets of paper would be about two-thirds of a legal cap sheet and it would be one-third less than would be for a page of letter size about 30 for the original and about 10 cents for the carbon copies.

Q. What is the fair and reasonable value of service for writing letters per page transcribing from dictation?

Mr. TUCKER: I object on the ground that the writing of letters is a general office expense to which the estate of Gilbert Moyers is not entitled to credit and on the further ground that there is nothing in the record to show that the letters for which credit is claimed here were dictated to a stenographer.

A. Thirty cents a page for the original.

Q. What would be a fair minimum price to put upon the writing of letters where there was less than a page?

Mr. TUCKER: I make the same objection.

Q. Take for instance about two-thirds of a page, what
298 would be the fair value of the letter? A. Twenty cents.

Q. And what would be the minimum charge for writing any letter no matter how much it covered, less than a page?

Mr. TUCKER: I object on the grounds stated and on the further ground that this is not a proper subject of expert testimony.

The AUDITOR: The ruling is reserved.

A. I would say ten cents a page.

Q. What would be the fair and reasonable charge for writing

typewritten briefs by the page regardless of stenography, on legal cap paper?

Mr. TUCKER: I make the same objection.

A. Six cents a folio or eighteen cents a page.

Q. And what would be a fair and reasonable value for the typewriting alone on letter size paper with three carbons? A. Twelve cents a page for the original and eight cents for three carbons.

Q. Do you mean for each of the three? A. For all three.

Q. Making a total of twenty cents for the original and three carbons? A. Yes.

Q. What the fair and reasonable value of writing letters per page? A. The same rate I mean 20 cents for original and three carbons.

Mr. DONALDSON: I offer in evidence the record and papers
299 in the case of Joel C. Johnson administrator of Richard W. Johnson being officially known in the Court of Claims as Congressional Case 6927, and it is stipulated by and between counsel that either side may resort to such of these papers as may be desired at any time and upon any hearing before the Auditor, the Supreme Court of the District of Columbia or any of the appellate tribunals.

Adjourned subject to notice.

CUMMINGS
vs.
CONSAUL.

MONDAY, *October* 9, 1905—2:30 p. m.

Hearing pursuant to agreement.

Present Messrs. Tucker and Donaldson.

Mr. TUCKER: I offer in evidence a certified copy of Treasury War Settlement Warrant 647 dated July 25, 1902 for $1968, payable to Joel C. Johnson, Administrator of Richard W. Johnson, deceased, together with a certified copy of the power of attorney accompanying such warrant.

It is stipulated by and between counsel that Gilbert Moyers for services rendered in the collection of the claim of Joel C. Johnson administrator of Richard W. Johnson received through the hands of G. W. Lawrence a sum equal to twenty-five per cent. of the face of the above mentioned warrant.

It is also agreed by counsel for the complainant that the late Gilbert Moyers was not a stenographer and typewriter.

300 Proof closed on both sides.

Adjourned for argument to Thursday October 19, 1905, at 10 o'clock A. M.

CUMMINGS
vs.
CONSAUL.

MONDAY, *March* 26, 1906—3 p. m.

Hearing pursuant to notice.
Present Messrs. Donaldson and Consaul and Tucker.

Mr. A. A. BIRNEY having been sworn testified as follows:

By Mr. TUCKER:

Q. You were the former solicitor for the defendant Moyers in this case? A. Yes.

Q. The printed record in this case at page 222, the Auditor's Report page 204 such printed record together with a stipulation of counsel appearing at page 386 of such printed record shows that on behalf of the then defendant in the cause you filed in August 1900 in the cause while it was pending before the Auditor three exhibits known as exhibits A. B. and C, of which exhibit A was entitled cases in Edmunds schedule which belong to other attorneys or received by Moyers from them, exhibit B lists of Edmunds cases, exhibit C list of cases not in Court or on Moyers' Books and which are in the schedule attached by complainant to agreement between Moyers and Edmunds, do you recall having filed such exhibits with the
301 Auditor?

Mr. DONALDSON: I object to the statement of counsel as to what is shown by the portions of the printed record referred to by him on the ground that the records will speak for themselves. It is further objectionable because the question assumes that Mr. Birney had the originals of which they purport to be copies in his possession, when no such fact, is yet shown.

A. Yes, I recall having filed lists of the nature of these.

Mr. DONALDSON: I object as immaterial and incompetent under this order of reference.

Q. Do you recall having served on me carbon copies of those exhibits? A. Yes.

Q. Were or were not those carbon copies of those exhibits correct copies of the original exhibits? A. Certainly, they were carbon copies.

By Mr. DONALDSON:

Q. I want to ask you Mr. Birney if you recall the original exhibits sufficiently to enable you to state by a hasty examination of these six or seven pages that they are true copies? A. Certainly not.

Q. You filed certain exhibits in the original case? A. Yes.

Q. You served carbon copies of those exhibits on Mr.
302 Tucker? A. I filed lists of cases distinguished in this manner as these lists are distinguished here and I served carbon copies of those lists on Mr. Tucker.

Q. You won't undertake to say that the lists embraced in the record before you are correct copies of the carbon copies served upon Mr. Tucker? A. It would be impossible for me to answer as to that, I remember certain of the names as I find them by looking at the lists, but it would be impossible to state positively.

Q. Did you personally prepare the original and carbon copies, served on Mr. Tucker? A. My impression is I prepared the original list then had it typewritten by my clerk and filed the typewritten original here and served the carbon on Mr. Tucker.

Q. Are you able to state whether or not you compared the lists which were typewritten with the ones you prepared? A. Well, I cannot say that at this time, but I can say I was satisfied that it was a correct copy.

Testimony closed on both sides.

303 EXHIBIT C. F. C. No. 1.

Filed November 15, 1906.

M. & C. 73.

S. C. C. No. 2028, Cong.

Bayou, Ark.

LUCY A. CALDWELL, Jefferson Co., Ark.,
vs.
THE UNITED STATES.

'87. To the Court of Claims.
All papers at court.
Ap'l 8/87. Petition P/A and F/A to Cl'm't Plum Bayou, Ark.
June 3/87. Brief on loyalty made and sent Memphis with jacket.
June 23/87. Appearance filed.
Aug. 11/87. Made 3 copies petition—2 to Dept. Justice and 1 to Memphis.
24, 1891. Call on C. S. Archives filed.
11, '91. Reply Archives Information from Jacket.
May 22/91. Call on Miss. Div. Tre's'y filed.
Jacket to Memphis.
Sept. 18/91. Jacket returned and placed in office files.
Ap'l 21/92. Reply to Misc. Div. Treas'y Dept. No. information.
Oct. 18, '92. War Reply. 1 Voucher in favor of Mrs. L. A. Caldwell & signed L. A. Caldwell, at Plum Bayou, (Ark.) for corn and fodder; one Lucy A. Caldwell, subscribed to C. S. Loan, at Little Rock, Ark. One L. A. Caldwell, signed for pay for services of slaves, at Little Rock, Ark.
Dec. 14/94. Wrote for names of witnesses and notary.
" 24/94. " L. J. Eaton to have proof forwarded and if same could not be found to forward name of notary. Also wrote Sol. C. F. Clark to forward proof.

Jan. 21/95. L. J. Eaton writes that proof has been held up by notary for fees $12.00 and wrote Mrs. Eaton to pay fees and that same would be refunded to her.
Feb. 15/95. Evidence received for claimant.
March 1/95. Brief on Loyalty filed.
July 6/95. Def't gives notice to take Ev. at Pine Bluff July 30/95.
" 10/95. Sent Mrs. Eaton notice, &c.
" 20/95. " " " Copy of Eliza Lany's Deps.
Aug. 10/95. Dep's for Defence filed.
April 19/98 Wrote Pradt about taking proof for Defense.
June 18/98. Deft's notice to take proof July 12, 13, 15.
" 23/ " Sent notice.
July 4/98. Deft's proof filed.
" 5/ " Wrote Mrs. Eaton about rebutting Ev.
Oct. 27/98. Rec'd to Pradt interrogatories X to take Clayton's Dep.
Dec. 29/ " Depositions for Defense filed.
Ap'l 11/99. Defendant's brief on loyalty filed.
May 10, '99. Notice for June 1, '99 filed.
June 5, '99. Wrote Mrs. Eaton to attend to the taking of testimony at Fort Smith June 20, 1899 and Plum Bayou June 23.
June 24, Deposition on behalf of cla'm't.
July 28, Deposition for *for* claimant filed.
Sept. 19, Motion filed by Def't to exclude certain testimony and brief thereon.
Oct. 31. Proposition of White and Altheimer Att'ys at Law Little Rock accepted upon contingent fee of ⅓ of my fee accepted if *do* satisfactory.

304

Nov. 17, Stipulation to put.
Nov. 19, 1900. Remanded to Law Calendar.
Nov. 13, '99. Wrote White & Altheimer Pine Bluff Ark. that affidavits of Brenson, Livery Stable Keeper at England was received and that affidavit of Col. Duvall should be taken and a copy of the affidavit of Lucy A. Eaton.
17. Stip'n to put on Dec'r Calendar.
Sept. 9, 1901. Cl'm't's Supp. Brief on Loyalty Filed.
" Reply to Deft's Motion to exclude testimony filed accompanied by Aff'ts of Lucy J. Eaton, Ben T. Duvall, Henry Connelly & W. B. Bronson.
Jan. 7, '02. Defendant's motion withdrawn with the stipulation that witnesses are not to be exam'd.
Oct. 25, '02. Deft's evidence on loyalty closed.
Dec. 17, '02. Wrote Benj. F. Caldwell enclosing bill- H. R. 16239 & 16215.
Jan'y 13, '03. Senate bill 6940 by Senator Jones of Arkansas, Secretary of Senator Jones requested bill saying that it would be introduced and case reref'd to Court.

Mar. 2, '03. To Court by Senate Resolution.
1903.
March 16, Report of W. Dept. on 1 filed (Conf. archives show one John Caldwell enlisted in Conf. Army on May 31, 1862, at Athens, Tenn., & deserted about Sept. 15/62. One John Caldwell was member of Ark. Mounted Vol. Militia, C. S. A. but no information thereto. No other record found of John Caldwell nor no record of Chas. Caldwell found in said archives.
1903.
May 22, Cl'm't's brief on merits filed. Ev. closed.
" 23, Cl'm't's reply brief on loyalty filed.
" 27, Wrote R. W. Haynes for power of attorney & letters testamentary.
July 6, Filed M. T. S. Executrix; L. T., M. T. S. A., P. A.
July 15, Advised R. W. Haynes that substitute brief would be filed.
July 24, Filed sub. brief on loyalty.
Nov. 6, Def't's Brief on L. & M. filed & ev. closed.
See M—509.

305

EXHIBIT C. F. C. No. 4.

Filed November 15, 1906.

Edmonds.

No. 4499, Cong.

HERBERT SMITH, MARLBORO CO., S. C.,
v.
THE UNITED STATES.

'88. Referred to Court of Claims.
S. C. C. papers at Court.
June 1, " Edmonds files Appearance.
Oct. 4, " Abstract of case in Jacket.
June 7, 1890. Call on C. S. Archives filed.
" 25, '90. Reply C. S. Archives—2 V'ch'rs signed H. Smith. See other indorsements on Call.
Nov. 15/92. Calls on War & Treas'y filed (Dept. Justice).
" 19 " Reply of War Dept. Mem. in Jacket.
" 29 " " " Treas'y " Entry on list certf. issued at Augusta, Ga. of one No. 4235 to H. Smith for $2,200 (p. 88).
Dec. 31/94. Wrote for names of witnesses and notary.
April 16/95. Gave notice to take depositions before T. W. Bauerhur, Notary Public at his office in Bennettsville, S. C. on May 10/95 at 10 A. M.

Mar. 2/95. Wrote Thos. C. Smith enclosing copy of notice, abstract, *abstract*, report from C. A. blanks and instructions.
No proof taken.
July 26, 1900. Wrote &c. for witnesses.
Sept. 29, 1900. Filed notice to take proof.
Oct. 10, 1900. Instructions, etc. to Mrs. S. J. Adams, Adams House, Bennettsville, S. C. to take test. Oct. 20th before T. J. Rogers, N. P.
Nov. 23, Depositions on behalf of Claimant filed.
July 3, 1901. Wrote S. J. Adams Bennettsville, S. C. relative to transaction in Southern bonds.
July 23, Cl'm't's brief on Loyalty filed.
Sept. 30, Def't's Brief on Loyalty filed.
Oct. 3, Reply to Def't's brief on Loyalty filed.
" 14, Def't's Supp. Brief on Loyalty filed.
" 23, Cl'm't's Reply to Def't's Supp. Brief on Loyalty filed.

1903.
Jan'y 14, Filed joint motion to withdraw certain briefs.
Feb'y 2, Dr. W. H. Adams, Danville, Penn. Correspondent.
" 12, Filed Cla'm't's reply on loyalty.
March 9, Submitted on loyalty.
March 16, 1903. Loyalty found.

1903.
M'ch 16, Found loyal.
" 18, Wrote Mrs. S. J. Adams enc. P. A. & F. A.
M'y 23, Filed cert. of appointment of Ad'm'x, P. A., Motion to sub. Ad'm'x; Motion to substitute C. F. C. as
306 Att'y petition & copies. Req. for findings & brief on merits; ev. closed.
July 31, Def't's brief on merits filed.
Aug. 11, Filed reply on merits.
Sept. 12, Report of T. Dept. on Loyalty & Merits filed (Nothing).
" " Report of W. Dept. on Merits filed (Nothing).
Nov. 16/03. Submitted on Merits.
Dec. 7, Findings $1826.
Settled M'ch 13, 1905.

307

EXHIBIT C. F. C. No. 5.

Filed November 15, 1906.

M & E.

No. 6847. Cong.

(Loneoak, Texas).

Carroll Co., Ga.

JANE EDGE

vs.

THE UNITED STATES.

No papers at Court.
Feb'y, '89. Referred to Court of Claims.
" " Appearance filed.
Aug., '89. Call on H. of R. for papers filed.
Sept., '89. Papers from H. of R. received at Court.
" 10, '89. Brief in jacket.
Aug. 4, '90. Call on C. S. Archives filed.
" 19, " Reply C. S. Archives, 1 vchr., signed Jane Edge, Walker Co., Ga.
June 17, '92. Call on War and Treas'y filed (Dept. of Justice).
Oct. 5/92. Reply of War Dept. filed, 1 vchr. signed Jane Edge, Walker Co., Ga., for corn, $107.00.
Reply of Treas'y Dept. filed—no information.
Dec. 15, '94. Wrote for names of witnesses and notary.
Aug. 15, 1900. Wrote for witnesses.
Sept. 1, 1900. Wrote J. D. Edge, Loneoak, Texas, for witnesses, etc.
4, 1900. Notice to L. A. P., that testimony would be taken at Loneoak, Texas, Sept. 27.
5, " Sent J. D. Edge blanks, instruction, etc.
Oct. 3d, " Testimony in Clerk's Office, fees due $2.75.
13, Notice to take testimony at Owlett Green, Texas, Nov. 21 on loy.
20, do. do. do.
26, Wrote to J. D. Edge, Loneoak, Texas, that testimony could not be taken, on 21st, and to arrange for a date with Frank Lee, Paris, Texas.
Nov. 19, 1900. Depositions on behalf of claimant filed.
Nov. 22, 1900. Wrote J. D. Edge, Loneoak, Texas, to remit $2.75 to clerk for deps.
Feb'y 7, Claimant's brief on loyalty filed with three copies filed.
May 23, Vouchers, etc. See papers.
July 26, Wrote J. D. Edge, Loneoak, Texas, relative to the intention of the Gov't to take test. at Naomoe, Walker Co., Ga., Aug. 17.

July 29, Depositions on behalf of cl'm't filed.
Aug. 2, Notified J. D. Edge, that deps. would be taken for def'ts, Aug. 17, 1901.
Aug. 19, 1901. Depositions for def'ts filed.
" 23, /01. Wrote H. P. Lumpkin for additional proof.
" 27, Cl'm'ts supp. brief on loyalty filed.
Nov. 28, Rep't of Treas. Dept. on loyalty and merits.

308

Dec. 4, 1901. Def't's brief reply to cl'm't's Suppl. Brief on Loyalty filed.
" 9, 1901. Wrote H. V. Reeves for name of Notary.
1902.
April 29, Reply to Def't's Brief on Loyalty filed.
May 13, Submitted on Loyalty.
May 19, Loyalty found.
June 30, Wrote J. D. Edge, Loneoak, Tex. as to adm'r.
July 26 / 02. " " " " for proof on M. and as to adm'r.
Aug. 21 / 02. " J. D. Edge, encl. P. A., F. A. and Pet.
Aug. 29 / 02. Filed motion to sub. J. D. Edge, adm'r.
Motion to sub. I. M. M. and C. F. C., as att'ys.
Sept. 8 / 02. Petition with 2 copies filed.
Request for finding and brief on merits filed, evidence closed on merits.
9 / 26 / 02. Report of War Dept. on Merits filed.
Nov. 3, 1902. D'f't's evidence on merits closed.
Nov. 21, 1902. Def't's brief on merits filed.
Nov. 25, Filed cl't's reply on merits.
Dec. 1, Submitted on merits.
1903.
Jan. 5, Findings $817.00.
Jan'y 15, Wrote for P. A. & C.
M'ch 31, 1905. Settled.

309 EXHIBIT H. S. C. No. 1.

Filed November 15, 1906.

Allowances in "Account of Expenses Incurred in the prosecution of Cases, Filed by Defendants in Equity No. 802, Cummings v. Moyers & Consaul.

Dismissed Cases.

Sept. 27, 28, 1892. Taking testimony at Oxford, Miss., 16 pp.
3789 2400 words, at 15 cents per folio . . . $3.60
Per diem of Notary 3.00
May 23, 1891. Taking testimony at Oxford, Miss., 25 pp.
4800 words at 15 cents per folio . . . 7.20
Per diem of Notary 3.00

Claim of Antoinette Walsh—7661, Cong.

Sept.	8, 1891.	Taking testimony at Vicksburg, Miss . .	3.00
		Expenses of Gilbert Moyers and J. T. Shelton, Commissioner	8.00
July	25, 1898.	Taking testimony at Vicksburg, Miss., 26 pp. 3266, words, at 15c. per folio . . .	4.90
Sept. 14 and 1900.	18	Taking affidavits of two witnesses, 1200 words	2.00
Mar.	27, 1899.	Taking testimony at Vicksburg, Miss. 12 pp.	3.00
Dec.	18, 1900.	Taking testimony at Vicksburg, Miss. 16 pp.	3.00

Claim of John J. McArthur—3811, Cong.

Nov.	20, 1889.	Taking tastimony at Port Gibson, Miss., 10 pp.	5.00
		Expenses of Gilbert Moyers and T. J. Shelton, Commissioner	10.00
May	4, 1893.	Taking testimony at Port Gibson, Miss., 12 pp.	3.00

310 Claim of William Whitaker—8982, Cong.

Oct.	26–28, 1892.	Taking testimony at Vicksburg, Miss., 36 pp., 5175 words at 15c. per folio . . .	$7.75
		Expenses of Gilbert Moyers	10.00

Claim of William Talliaferro—4159, Cong.

May	19, 1891.	Taking testimony at Water Valley, Miss., 30 pp. 5049 words, at 15c. per folio . .	7.55
		Per diem of notary	3.00
Nov.	3–5, 1894.	Taking affidavits of two witnesses, 1100 words	2.00

Claim of John R. McAlpine—3810, Cong.

Nov.	20, 1889.	Taking testimony at Port Gibson, Miss., 16 pp. 3000 words, at 15c.; per diem $3 .	7.50
		Expenses of Gilbert Moyers and T. J. Shelton, Commissioner-	8.00
May	2, 1891.	Taking affidavit, 300 words	.70

Claim of Joseph A. Weatherly—3357, Cong.

Nov.	2, 1889.	Taking testimony at Water Valley, Miss., 2099, 3340 words, at 15c.; $3.00 per diem.	8.15
		Expenses of Gilbert Moyers and T. J. Shelton, Commissioner	9.00

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*See List "A"
*See #9594 Allowances on Pending cases.

Claim of Patrick H. Flannigan—6894, Cong.

June	27, 1895.	Taking testimony at Columbia, S. C., 12 pp., 3850 words, typewriting, 365 words longhand	$8.25
Aug.	21, 1897.	Taking testimony at St. Louis, Mo . . .	3.00

Claim of Phillip Gordon—6852, Cong.

Dec. 16, 1892. Taking testimony at Charlestown, W. Va. 19 pp. 4370 words, at 15c. per folio . . $6.35
Feb. 4, 1895. Taking testimony at Charlestown, W. Va., 9 pp. 2700 words, at 20c. per folio . . 5.40

*See list "A"

311 Claim of George W. Spotts—6824, Cong.

Sept. 21, 1892. Taking testimony at Charlestown, W. Va., 12 pp. 2890 words, at 15c. per folio . . *$4.35
Jan. 25, 1893. Taking testimony at Charlestown, W. Va. . 3.00

Claim of Abraham M. Weaver—6793, 7607,* and 7970,* Cong.

Dec. 16, 1890. Taking testimony at Centre Ala. 3.00
Securing affidavits of five witnesses, 1300 words 2.75

*Dismissed for want of prosecution.

Claim of W. F. Hurt—7810, Cong.

Nov. 6, 1895. Taking testimony at Hollywood, Ala., 14 pp. 2270 words, at 15c. per folio . . . 3.40

Claim of Richard H. Willett—5612, Cong.

Nov. 29, 1889. Taking testimony at Corinth, Miss. . . . 3.00
Expenses of Gilbert Moyers and T. J. Shelton, Commissioners 8.00

Claim of George F. Ponder—4470, Cong.*

Oct. 2, 1890. Taking testimony at Madison, Ga., 38 pp. 6475 words, at 15c. per folio 9.70
Per diem 3.00

*See list "A"

Claim of Andrew Kremer—3361, Cong.

Oct. 4, 1892. Taking testimony at Corinth, Miss., 21 pp., 4068 words, at 15c. per folio 6.10
Taking affidavits of four witnesses, 1000 pp. 2.50

Claim of Peter Lynch—6812, Cong.

Sept. 9, 1889. Taking testimony at Atlanta Ga., 19 pp. 3435 words, at 15c. per folio 5.15
Per diem 3.00

312 Claim of William Rutherford—6853, Cong.

Feb. 18, 1901. Taking testimony at Savannah, Ga., *p* pp. 2146 words, at 20 c. per folio 4.30

Claim of Thomas Shelby—3412, Cong.

Nov.	25, 1889.	Taking testimony at Greenville, Miss. 14 pp. 2000 words, at 15c.; per diem $3 .	6.00
		Expenses of Gilbert Moyers and T. J. Shelton, Commissioners	15.00

Claim of Samuel H. Miller—5730, Cong.

Nov.	2, 1889.	Taking testimony at Water Valley, Miss. .	3.00
		Expenses of Gilbert Moyers and T. J. Shelton	5.00
Sept.	26, 1892.	Taking testimony at Water Valley, Miss. 28 pp. 4164 words, at 15c. per folio . .	6.25

Claim of John McKinnie—3823, Cong.

Oct.	4, 1895.	Taking testimony at Midville, Ga. . . .	3.00

Claim of A. R. Leonard—7451, Cong.

Mar.	3, 1894.	Taking testimony at Washington, D. C., 12 pp. 2525 words, at 20c. per folio . . .	5.05
Mar.	7, 1894.	Taking testimony at Port Gibson, Miss., 4075 words, at 15c. per folio	6.10

Claim of John Cox—3348, Cong.

Dec.	31, 1900.	Taking testimony at Rome, Ga., 17 pp., 2770 words, at 15c. per folio	4.15

Claim of Martha Crane—5109, Cong.

May	9, 1901.	Taking testimony at West Side, Miss. . .	3.00
May	8, 1901.	Taking testimony at Port Gibson, Miss. .	3.00
		Preparing affidavits of three witnesses, 1000 words.	2.00

313 Claim of James A. Mahon—7487, Cong.

Dec.	14, 1892.	Taking testimony at Iuka, Miss., 39 pp. .	9.30
		Preparing affidavits, 900 words, three witnesses	2.00 *

* See List "A"

Claim of William T. Lamb—3768, Cong.

May	23, 1891.	Taking testimony at Oxford, Miss. . . .	3.00

Claim of Zaddock C. Baker—6855, Cong.

Sept.	24, 1895.	Taking testimony at Conyer, Ga.	3.00

Claim of Susan Davis—6821, Cong.

Feb.	7, 1896.	Taking testimony at Dahlonega, Ga. . .	3.00
Jan.	17, 1902.	Preparing two affidavits, 900 words . . .	2.00
Jan.	17, 1902.	Preparing one affidavit	.40

Claim of John Ficken—6844, Cong.

Aug. 12, 1889. Taking testimony at Atlanta, Ga., 16 pp., 3366 words, at 15c. per folio 5.05
Per diem of notary 3.00

Claim of Jefferson Burnett—7484, Cong.

Oct. 5, 1892. Taking testimony at Corinth, Miss., 30 pp., 5540 words, at 15c. per folio 8.30
Preparing affidavits of five witnesses, 600 words 2.25

Claim of Susan Carrier—6820, Cong.

Aug. 22, 1889. Taking testimony at Savannah, Ga., 12 pp., 2400 words, at 15c. per folio 3.60
Per diem of notary 3.00

314 Claim of L. D. Aldrich—5848, Cong.

Feb'y 8, 1889. Taking testimony at Natchez, Miss. . . . 3.00

Claim of James I. Drumgoole—7465, Cong.

Sept. 10, 1891. Taking testimony at Vicksburg, Miss. . . 3.00
Expenses of Gilbert Moyers and T. J. Shelton, Commissioner- 10.00
Sept. 13, 1894. Taking Testimony at Clinton, Miss., 17 pp., 2600 words, at 15c. per folio 3.90
Mar. 21, 1895. Taking testimony at Edwards, Miss. . . 3.00

Claim of William M. Bowles—5184, Cong.

Oct. 31 and
Nov. 1, 1889. Taking testimony at Oxford, Miss., 23 pp., 3870 words, at 15c. per folio 5.80
Expenses of Gilbert Moyers and T. J. Shelton, Commissioner- 12.00

Claim of John T. Bell—4829, Cong.

Oct. 13, 1892. Taking testimony at Batesville, Miss., 11 pp. 2470 words, at 15c. per folio . . . 3.70

Claim of Henry Badon—5849, Cong.

Feb. 20, 1895. Taking testimony at Summit, Miss. . . . 3.00

Claim of W. S. Bunch—3492 & 5633, Cong.*

Nov. 1, 1889. Taking testimony at Oxford, Miss. . . . 3.00
Expenses of Gilbert Moyers and T. J. Shelton, Commissioner- 5.00

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*5633 Dismissed for want prosecution.

Claim of Ballard D. Dean—6882, Cong.

Aug. 27, 1895. Taking testimony at Belton, S. C. . . . 3.00

15		Claim of James A. Houston—3374, Cong.	
Apr.	11, 1900.	Taking testimony at Oakland, Miss., 22 pp., 2375 words, at 15c. per folio	3.55
		Claim of Francis B. Ragsdale—4088, Cong.	
Mar.	3, 1893.	Taking testimony at Port Gibson, Miss., 32 pp., 4900 words, at 15c. per folio . . .	7.35
		Claim of Martin Caulfield—4500, Cong.	
May	7, 1895.	Taking testimony at Charleston, S. C. 13 pp. 2635 words, at 15c. per folio	3.95
June	18, 1895.	Taking testimony at Charleston, S. C. . .	3.00
		Claim of Isaac Roberts—7157, Cong.	
May	1, 1893.	Taking testimony at Jackson, Miss., 23 p., 4766 words, at 15c. per folio	7.15
Oct.	30, 1895.	Taking testimony at Edwards, Miss., 24 pp. 3300 words, at 15c. per folio	4.95
		Claim of Mary O'Cain—6887, Cong.	
Sept.	2, 1902.	Taking testimony at Orangeburg, S. C. .	3.00
		Claim of Arthur J. Hill—6928, Cong.	
May	25, 1894.	Taking testimony at Washington, D.C. . .	3.00
July	30, 1894.	Taking testimony at Wilmington, N. C. 25 pp., 6000 words, at 25c. per folio . . .	15.00
		Claim of Mary E. English, executrix, James C. Ballance, deceased—8252, Cong.	
Apr.	24, 1895.	Taking testimony at Swan Quarter, N. C., 21 pp., 2900 words at 15c. per folio . .	4.35
Aug.	20, 1895.	Taking testimony at Swan Quarter, N. C. 36 pp., 5700 words at 15c. per folio . .	8.55
Dec.	30, 1895.	Taking testimony at Swan Quarter, N. C. .	3.00
May	26, 1896.	Taking testimony at Swan Quarter, N. C. .	3.00
316		Claim of William D. Hemp—8635, Cong.	
Oct.	8, 1900.	Taking testimony at Staunton, Va., 4 witnesses, 4500 words, at 20c. per folio . .	9.00
Sept.	10, 1902.	Preparing and filing affidavits of two witnesses, 600 words	1.20
		Claim of Isaac Bloom—1835, Cong. (see also 8289, Cong., with which this case was consolidated; also see list of Pending cases for entry of App. by M. & C.)	
May	5, 1888.	Taking testimony at New Orleans, La. 49 pp. 5960 words, at 15c.; per diem $3 . .	11.94
April	1890.	Preparing affidavits 3 witnesses, 9 pp., 2800 words	4.20

Claim of Lucy Breeden—6874, Cong.

Dec. 28, 1900. Taking testimony at Brightsville, S. C. 2 witnesses 8 pp. 3.00

Claim of Hector McMillan—6922, Cong.

Apr. 26, 1894. Taking testimony at Fayetteville, N. C. 20 pp. 4200 words, at 15c. per folio . . . *6.30

Claim of Daniel L. Smith—8853, Cong.

Aug. 9, 1895. Taking testimony at Fayetteville, N. C. 29 pp. 5000 words at 15c. per folio . . . 7.50

Sept. 14, 1897. Preparing five affidavits 1.25

Claim of Samuel Cline—4441, Cong.

July 30, 1895. Taking Testimony at Harrisonburg, Va., 13 pp. 3 Witts. 2300 words at 20c. folio. 4.60

Claim of John J. Gardner—6826, Cong.

Nov. 14, 1889. Taking testimony at Franklin, La. . . . 3.00

Expenses of Gilbert Moyers and T. J. Shelton, Commissioner 15.00

Nov. 16, 1893. Taking testimony at Opelousas, La., 19 pp. 3100 words, at 15c. per folio 4.65

Oct. 10, 1894. Taking testimony at Grand Coteau, La., 20 pp. 3000 words, at 15c. per folio . . . 4.50

317 Claim of Thomas B. Paine—7768, Cong.

July 13, 1895. Taking testimony at Clarksville, Ark. . . 3.00

Claim of James Dougherty—7819, Cong.

Nov. 6, 1895. Taking testimony at Helena, Ark., 3 witts. 3150 words, at 20c. per folio 6.30

Claim of Oliver Bartley—8335, Cong.

Aug. 24, 1900. Taking testimony at Burr Hill, Va. . . . 3.00

Claim of Joseph Click—4469, Cong.

Jan. 21, 1896. Taking testimony at Harrisonburg, Va., 3 witnesses, 25 pp. 9.60

Claim of Noah M. Funkhouser—4489, Cong.

July 25, 1895. Taking testimony at Tom's Brook, Va., 31 pp., 3 witts. 4900 words, at 15c. per fo. . 7.35

Aug. 26, 1902. Preparing affidavits of three witnesses, 670 words 1.50

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*See List "A."

Claim of Ezra B. Towne—3431, Cong.

Nov.	21, 1889.	Taking testimony at Vicksburg, Miss., 18 pp. 5 witnesses, 3870 words, at 15c. . .	5.80
		Per diem of commissioner	3.00
		Expenses of Gilbert Moyers and T. J. Shelton, Commissioner	15.00
Dec.	14, 1889.	Taking testimony at Memphis, Tenn., 9 pp. one witness, 1470 words, at 15c. . . .	2.20
		Per diem of commissioner	3.00
		Expenses of Gilbert Moyers and T. J. Shelton, Commissioner	10.00

Claim of Emily V. Glover—3680, Cong.

Nov.	13, 1893.	Taking testimony at Waterproof, La. . .	2.50
Feb.	19, 1894.	Taking testimony at Sicily Island, La. 17 pp., 2300 words, at 15c. per folio . . .	3.45
318			
Sept.	16, 1895.	Taking testimony at Florence, La. . . .	3.00
Nov.	8, 1899.	Taking testimony at Monroe, La., 10 pp. 3340 words, at 20c. per folio	6.68
Jan.	7, 1901.	Taking testimony at New Orleans, La., 6 pp., 1700 words, at 20c. per folio . . .	3.40
Mar.	19–21, ——.	Preparing affidavits for new trial	1.00

Claim of John B. Fauver—8552, Cong.

Aug.	14, 1895.	Taking testimony at Staunton, Va., 2 witnesses, 1700 words, at 20c. per folio . .	3.40

Claim of Celestine Dauterive—6828, Cong.

Feb.	27, 1899.	Taking testimony at New Iberia, La., 18 pp. 3200 words at 15c. per folio	4.80
June	3, 1901.	Preparing and filing three affidavits . .	1.50

Claim of W. K. Abbott—4467, Cong.

Jan.	30, 1896.	Taking testimony at Harrisonburg, Va., 2 witnesses, 9 pp	4.00

Claim of Minerva Tilley—4643, Cong.

Oct.	1, 1893.	Taking testimony at Chapel Hill, N. C., 15 pp. 3000 words, at 15c. per folio . . .	4.50

Claim of Nelson T. Thompson—6879, Cong.

June	23, 1894.	Taking testimony at Raleigh, N. C., 14 pp.	4.00
June	25, 1895.	Taking testimony at Raleigh, N. C. . . .	3.00

Claim of Pleasant Baker—6839, Cong.

Mar.	18, 1895.	Taking testimony at Stillsboro, Ga., 12 pp., 4 witts. 3000 words, at 15c. per fo. . .	4.50

Claim of John Griffith—1189, Cong.

Oct.	23, 1902. Taking testimony at Luray, Va., 2 witnesses, 9 p. 1600 words, at 20c. per folio.	3.20

319 Claim of Elijah Parker—6906, Cong.

Aug.	12, 1895. Taking testimony at Fayetteville, N. C., 14 pp., 3000 words, at 20c. per folio . .	6.00
Dec.	24, 1901. Preparing and filing affidavits, 1350 words.	2.00
Jan.	2, 1902. Preparing and filing affidavit	50

Claim of James Lowry—7960, Cong.

Apr.	27, 1892. Taking testimony at Brooke, Va., 4 witts., 24 pp., 5000 words at 20c. per folio . .	10.00*
	Per diem of commissioner	3.00

Claim of John Lowry—3367, Cong.

Apr.	28, 1893. Taking testimony at Brooke, Va., 3 witnesses, 19 pp., 4000 words at 20c. per folio . .	8.00
	Per diem of commissioner	3.00

Claim of Arrey Marrs—8370, Cong.

July	20, 1895. Taking testimony at Prairie Grove, Ark., 4 witnesses	2.50

Claim of Nancy T. M. Tooley—6936, Cong.

Apr.	24, 1895. Taking testimony at Swan Quarter, N. C., 16 pp., 2300 words, at 15c. per folio . .	3.45

Claim of John Sours—8341, Cong.

May	5, 1895. Taking testimony at Luray, Va., 11 pp., 3225 words at 20c. per folio.	6.45

Claim of Craven J. King—1887, Cong.

May	12, 1893. Taking testimony at Gainesville, Va., 18 pp., 4000 words, at 25c. per folio	10.00

Claim of Mary A. England—3962, Cong.

May	8, 1895. Taking testimony at Van Buren, Ark., 5 witnesses, 3520 words at 15c. per folio . .	5.28

320 Claim of Michael Carwell—6841, Cong.

Oct.	9, 1895. Taking testimony at Staunton, Va., 2 Wit. 10 pp., 2550, at 20c per folio	5.10
Feb.	18, 1897. Taking testimony at Staunton, Va., 3 Witnesses, 11 pp. 2600 words, at 20c. per fo.	5.20
Jan.	14, 1899. Taking testimony at Staunton, Va., 3 witnesses, 5 pp. 1500 words, at 20c. per fol.	3.00

*See List "A."

Claim of Susan M. Thagard—6926, Cong.

Aug. 9, 1895. Taking testimony at Fayetteville, N. C. . 3.00

Claim of Abraham Eichburg—1759, Cong.

Jan. 17, 1894. Taking testimony at Petersburg, Va., 3 witts. 17 pp. 5.00

Claim of Sarah Allen—1185, Cong.

Feb. 19, 1902. Taking testimony at Sheppards, Va. 3 witts. 20 pp. 3100 words, at 15c. per fo. 4.65

Claim of William R. Clark—6923, Cong.

Apr. 26, 1894. Taking testimony at Fayetteville, N. C. 13 pp. 2900 words at 15c. per folio . . . 4.35

June 25, 1894. Taking affidavits in support of motion for new trial, 5 pp. 600 words 90

July 5, 1894. Taking affidavits in support of motion for new trial, 5 pp. 670 words 1.00

Claim of Harrison Fauber—4442, Cong.

July 13, 1893. Taking testimony at Strasburg, Va. 2 witnesses, 2170 words, at 15c. per folio . . 3.25

Claim of B. F. Childrey—3191, Cong.

June 4, 1895. Taking testimony at Petersburg, Va. 12 pp. 2 witts. 2670 words at 15c. per folio . . 4.00

321 Claim of Charles T. Weston—1907, Cong.

July 30, 1894. Taking testimony at Front Royal, Va., 5 witnesses, 23 pp. 4.00

Claim of Patrick Brady—4494, Cong.

Dec. 6, 1902. Taking testimony at Charleston S. C. 7 pp., 2 witnesses 3.00

Claim of James L. Roane—1332, Cong. and 9354, Cong.

April 21, 1890. Taking testimony at Columbia, S. C. 23 pp. 2300 words, at 15c. per folio 5.40

Per diem 3.00

May 1, 1893. Taking testimony at Columbia, S. C. . . 3.00

Aug. 14, 1907. Taking testimony at Columbia, S. C. . . 3.00

Claim of Richard Harding—7467, Cong.

Nov. 22, 1889. Taking testimony at Vicksburg, Miss. 760 words, at 15c. per folio 1.14

Per diem of commissioner 3.00

Expenses of Gilbert Moyers and T. J. Shelton 5.00

May 5, 1893. Taking testimony at Port Gibson, Miss. 2355 words at 15c. per folio 3.50

Aug. 7, 1895. Testimony taken near Rocky Springs, Miss. 3.00
Dec. 4, 1895. Taking testimony at Rocky Springs, Miss. 3.00
Dec. 24, 1895. Taking testimony at Russum, Miss. . . . 3.00

Claim of Samuel Fetzer—4455, Cong.

July 26, 1895. Taking testimony at Tom Brook, Va., 16 pp. 2650 words, at 15c. per folio . . . 3.95

322 EXHIBIT H. S. C. No 2.

Filed November 15, 1906.

"A."

6922 Apr. 26, 1894. Testimony at Fayetteville N. C. 20 pp. part blanks, balance handwriting, claim for 4200 words, not more than 3500 words.

3789 May 23, 1891. Testimony at Oxford, Miss. handwriting, claim for 25 pp. 4800 words. There are 25 pp. but not more than 4000 words.

3810 Nov. 20, 1889. Testimony at Port Gibson, Miss. They claim 16 pp. 3000 words. I can only average 2240 words, including printing.

6852 Feb. 4, 1895. Testimony at Charlestown, W. Va., they claim 9 pages, 2700 words. There are 7½ pages of typewriting, and two blanks filled in. Not more than 2250 words of typewriting.

4470 July 30, 1892. Brief on Loyalty claimed for, 13 pp. Not in papers or entered on docket $3.25.

6842 Aug. 6, 1891, and Aug. 21, 1891. Calls by Chas. & W. B. King. Gilbert Moyers Power of Att'y not filed until Jan. 20, 1900, but appearance by Moyers & Edmonds filed Feb. 21, 1889.

7487 Dec. 14, 1892. Charge for taking testimony at Iuka, Miss. 39 pages, $9.30. Fees marked "unpaid," and signed by commissioner.

7960 Apr. 27, 1892. Testimony of 4 witnesses at Brooke, Va., 24 pp. 5000 words at 20c.

The following is attached to the deposition:

"*Table of Fees.*

Commissioner's fees	$3.00
Deposition of George Dent, 1137 words, 13 folios @ 15c.	1.95
Jas. Morton, 1205 words, 12 folios, @ 15c.	1.80
J. L. Lowry, 1356 words, 14 folios @ 15c.	2.10
John Gree, 1093 words, 11 folios @ 15c.	1.65
Aggregating	$10.50

(S'g'd) GEO. F. CAHILL,
Commissioner.

Fees unpaid.

323 The charge made in Expense account is:

Apr. 27, 1892. Taking testimony at Brooke, Va., 4 witnesses, 24 pp. 5,000 words at 20c. per folio $10.00
Per diem of commissioner 3.00

324 EXHIBIT H. S. C. No. 3.

*Allowances in "Account of Expenses Incurred in the Prosecution of Cases," Filed by Defendants in Eq. No. 20802, Cummings v. Moyers & Consaul.**

Pending Cases.

Claim of Mary E. and Albert Jones—7485, Cong.

Nov. 28, 1889. Taking testimony at Corinth, Miss., 9 pp. . $2.00
Expenses of Gilbert Moyers and T. J. Shelton, Commissioner- 8.00

Claim of Thomas Brown—8400, Cong.

Dec. 30, 1892. Taking testimony at Charlestown, W. Va. . 3.00

Claim of Charles Weill—7492.

Sept. 13, 1895. Taking testimony at Brandon, Miss., 15 pp. 2900 words, at 15c. per folio 4.35

Claim of William Whitaker—9594, Cong.

NOTE.—See 8982 Dismissed cases, with which this case is consolidated, and expenses allowed under that case.

Claim of David B. Johnson—6947, Cong.

Oct. 29, 1900. Taking testimony at Lawrence Cove, Ala. 9 pp. 3.00
May 2, 1902. Taking affidavits of four witnesses 1.75

Claim of Andrew Zellner—7480, Cong.

Oct. 14, 1902. Taking testimony at Forsyth, Ga. 4 pp., 2325 words, at 20c. per folio 4.65

325 Claim of M. B. D. Vaughn—7947, Cong.

Dec. 12, 1902. Taking testimony at Riverdale, Ga. 3.00

Claim of Isaac V. Burns—3368, Cong.

Sept. 18, 1900. Taking testimony at Martinsburg, W. Va. . 3.00

Claim of Allen J. Veal—6842, Cong.

Aug. 8, 1889. Taking testimony at Atlanta, Ga., 15 pp. 3670 words, at 15c. per folio 5.50
Per diem 3.00

Oct. 22, 1895. Taking testimony at Stone Mountain, Ga. . 3.00
Dec. 13, 1895. Taking testimony at Stone Mountain, Ga. . 3.00
Aug. 3, 1901. Taking testimony at Stone Mountain, Ga. 52 pp. 12800 words (typew'r) at 20c. 25.60

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* For further information as to all Pending cases, See List of Pending Cases.

Claim of G. W. Bane—5842, Cong.

Oct. 22, 1902. Taking testimony at Charlestown, W. Va. . 3.00

Claim of J. C. Spight—7466, Cong.

May 15, 1895. Taking testimony at Ripley, Miss., 22 pp. 4435 words, at 15c. per folio 6.65

Claim of William Lasley—7486, Cong.

May 13, 1902. Taking testimony at Corinth, Miss. 3.00
May 27, 1902. Taking testimony at Burleson, Ala. . . . 3.00
Oct. 23, 1902. Taking testimony at Red Bay, Ala. 3.00

Claim of Mary Wellmaker—6794, Cong.

June 6, 1901. Taking testimony at Barnesville, Ga. . . . 3.00
Sept. 23, 1901. Taking testimony at Barnesville, Ga. . . . 3.00

Claim of Harriett Langston—7450, Cong.

May 15, 1895. Taking testimony at New Albany, Miss. 27 pp. 5.25

326 Claim of Mrs. E. B. De Vaughn—7946, Cong.

Dec. 12, 1902. Taking testimony at Riverdale, Ga. 3.00
Apr. 6, 1903. Taking testimony near Jonesboro, Ga. . . . 3.00

Claim of Joseph J. Jordan—6895, Cong.

July 8, 1896. Taking testimony at Murfreesboro, N. C. . . 3.00

Claim of Isaac Bloom—8289, Cong. (See also 1835 in Allowances on Dismissed cases; also List of Pending Cases. This case was consolidated with 1835.)

Oct. 11, 1895. Taking testimony at New Orleans, La., 35 pp. 3 witts. 4500 words, at 15c. per fo. . . . 6.75
Oct. 21, 1895. Taking testimony at New Orleans, La., 10 p-. 3.00
Oct. 23, 1895. Taking testimony at New Orleans, La. . . 3.00
Dec. 25, 1899. Taking testimony at New Orleans, La., 4 p-. . 3.00
Expenses of Gilbert Moyers 5.00
Jan. 23, 1900. Taking testimony at New Orleans, La., 6 p-. . 3.00
May 14, 1901. Taking deposition of Isaac Bloom on interrogatories 3.00

Claim of John Baker—4490, Cong.

Apr. 7, 1903. Taking testimony at Charleston, S. C., 4 witts. 3250 words, at 20c. per folio . . . 6.50

Claim of Carter Carr—6829, Cong.

Oct. 12, 1901. Taking testimony at Alexandria, La., 6 pp. 1700 words, at 20c. per folio 3.40

Claim of Robert Waters—7958, Cong.

Sept. 26, 1902. Taking testimony at Dumfries, Va., 3 witnesses, 8 pp. 3.00

Claim of Johanna Merckle—5785, Cong.

Sept. 17, 1900. Taking testimony at Clinton, La. 3.00

327 Claim of Esidore Cohen—6920, Cong.

Apr. 27, 1900. Preparing and filing two affidavits 50
Apr. 28, 1900. Preparing and filing affidavit 50
May 12, 1903. Preparing and filing affidavit 50

Claim of Francois Bouligny—6965, Cong.

Nov. 12, 1900. Taking testimony at New Roads, La. . . . 3.00

Claim of John Brewer—5108, Cong.

Apr. 8, 1903. Taking testimony at Thompson, Ark. . . . 3.00

Claim of John B. Suggs—6932, Cong.

Dec. 19, 1902. Taking testimony at Raleigh, N. C. 9 pp. 2500 words, at 20c. per folio 5.00

Claim of John Davis, Jr.—6915, Cong.

Sept. 27, 1901. Taking testimony at Goldsboro, N. C. . . . 3.00
Oct. 10, 1901. Taking testimony at Washington, D. C. 7 pp. 2150 words, at 20c. per folio 4.30
May 8, 1903. Taking testimony at Washington, D. C. 9 pp. 2400 words, at 20c. per folio 4.80

Claim of Thomas H. Rollins—9384, Cong.

June 9, 1896. Taking testimony at Warrenton, Va. 10 pp. 3.00

Claim of John H. Funkhouser—4460, Cong.

Oct. 17, 1902. Taking testimony at Mount Olive, Va. 3 witnesses, 2570 words, at 15c. per folio . . . 3.85

Claim of Francis E. Curtis—8440, Cong.

Nov. 22, 1902. Taking testimony at Orleans, Va. 5 wits. 21 pp. 3435 words, at 15c. per folio 5.15

328 Claim of Marcellus J. Edwards—6916 (Dismissed). 10192 (Pending).

Jan. 31, 1893. Taking testimony at Washington, D. C. 19 pp. 4560 words, at 25c. per folio 11.40
Nov. 16, 1893. Taking testimony at Snow Hill, N. C. 20 pp. 5.50
Feb. 5, 1894. Taking testimony at Snow Hill, N. C. . . 3.00
Aug. 1, 1894. Taking testimony at Raleigh, N. C. . . . 3.00

329 EXHIBIT H. S. C. No. 4.

Filed November 15, 1906.

List of Pending Cases.

1673 Cong. Last entry in case, Oct. 16, 1900, Motion to calendar under rule 74 with list of cases entered under case No. 7 Cong.
1915 " Last entry, Oct. 16, 1900, Motion to calendar as above.
1963 " Last Entry, Oct. 16, 1900, Motion to calendar as above.
3368 " Last entry, September 20, 1900, Deposition filed. No appearance by Moyers & Consaul.
3496 " No appearance by Moyers & Consaul. Last entry Jan. 15, 1901.
3345 " Last entry January 15, 1901, Motion to calendar under Rule 74.
4474 " No appearance by Moyers & Consaul. Last entry Aug. 28, 1900, Notice to take testimony.
4460 " August 11, 1903. Motion to substitute Moyers & Consaul allowed and power of attorney filed.
Mar. 1, 1904. Argued and submitted on loyalty.
Mar. 7, " . Loyalty not found; dismissed.
4454 " Last entry Mar. 1, 1901, Motion by defendant to place on calendar under Rule 74. List of cases under case No. 4001 Cong
4468 " Last entry March 1, 1901, motion to calendar as above.
4490 " Nov. 4. 1903. Motion to substitute Moyers & Consaul, with power of attorney filed. Allowed Dec. 28, 1903.
Feb. 17, 1904. Claimant's reply brief on loyalty.
Feb. 18, 1904. Submitted on loyalty.
Mar. 21, 1904. Loyalty not found; dismissed.
4493 " Last entry March 1, 1901, Motion to calendar under Rule 74, with cases listed under No. 4001.
4491 " Dec. 12, 1893. Appearance filed by F. P. Dewees.
Oct. 10, 1900. Claimant's notice to take testimony.
Dec. 17, 1900. Clmt's. notice to take testimony. No appearance by G. Moyers or by Moyers & Consaul.

330

4050 Cong. Last entry March 1, 1901. Motion by defendant to calendar under Rule 74 with cases under No. 4001.
5842 " Nov. 2, 1903. Motion to substitute attorneys M. & C. with Power of Attorney filed. Allowed Dec. 10, 1902.

Oct. 5, 1903. Depositions filed.
Nov. 6, 1903. Brief on loyalty filed.
Apr. 1, 1905. Depositions filed.

5785 " Submitted under Rule 93 on May 5, 1905, and dismissed on May 23, for want of prosecution.

5108 " Sept. 2, 1903. Motion to substitute M. & C. with Power of Attorney filed. Allowed.
Dec. 26, 1903. Claimant's Reply brief on loyalty.
Dec. 31, 1903. Defendant's Supplemental brief.
Jan. 11, 1904. Submitted.
Jan. 18, 1904. Found loyal.

5842 " Nov. 12, 1902. Motion to substitute M. & C. with power of attorn.y filed. Allowed Dec. 10, 1902.
Oct. 5, 1903. Deposition filed for claimant.
Nov. 6, 1903. Claimant's brief on loyalty filed.
Apr. 1, 1905. Depositions for claimant filed.

6842 (See List "A.") July 22, 1903. Motion to substitute Moyers & Consaul and Power of Attorney filed. Allowed July 25, 1903.

6787 " No appearance or other entry since Sept. 29, 1890. Moyers and Edmonds attorneys of record at that time. Motion to place on calendar Mar. 1, 1901, by defendant under Rule 74.

6482 " Last entry Apr. 2, 1892. Motion Mar. 1, 1901, to place on calendar under Rule 74, with cases under No. 4001.

6807 " No appearance by anyone except Gilbert Moyers.

6876 " No entry since Oct. 14, 1892. Motion to place on calendar under Rule 74 on Mar. 1, 1901.

6821 " No entry since June 2, 1902. Gilbert Moyers attorney of record. Motion to place on calendar Mar. 1, 1901, by defendants under Rule 74.

6810 " Last entry August 28, 1900. Notice to take testimony.

6877 " Last entry March 1, 1901. Motion to place on calendar under Rule 74 with cases under No. 4001.

6897 " No entry since May 5, 1900. No appearance by M. & C.

331

6830 " Last entry March 1, 1901. Motion to calendar under Rule 74 with cases under No. 4001.

6895 " Last entry July 11, 1896. Depositions for claimant filed.

6878 " Last entry Mar. 1, 1901. Motion to calendar under Rule 74 with cases under No. 4001.

6829 " Last entry Apr. 7, 1902. Loyalty found. No appearance by M. & C.

6935 " Aug. 3, 1903. Depositions *to* claimant filed.
Sept. 9, 1903. Depositions for claimant filed.
No appearance by Moyers and Consaul or anyone except Moyers and Edmunds.

6932 " Aug. 12th, 1903. Motion to substitute Moyers & Consaul with power of attorney filed. Sent to Ch. J. Allowed, the letters of administration to be filed before final trial.
Apr. 30, 1904. Defendant's brief on loyalty.

6825 " Last enty Mar. 1, 1901. Motion to calendar under Rule 74 with cases under No. 4001.

6915 " Nov. 17, 1902. Submitted on loyalty.
Mar. 9, 1903. Loyalty Found.
May 5, 1903. Claimant's notice to take testimony. No appearance by Moyers & Consaul.

6917 " Aug. 1, 1903. Motion to substitute M. & C. with Power of Attorney filed. Allowed Aug. 3, 1902.
Aug. 22, 1903. Claimant's notice to take testimony.
Dec. 14, 1903. Depositions for claimant filed.
Dec. 16, 1903. Claimant's brief on loyalty.
Feb. 11, 1904. Defendant's brief on loyalty.
Feb. 15, 1904. Clmt. reply brief.
" " " . Submitted on loyalty.
Aug. 14, 1904. Loyalty not found; dismissed.

6811 " Last entry Mar. 1, 1901. Motion to calendar under Rule 74 with cases under No. 4001.

6890 " Last entry March 1, 1901. Motion to calendar under Rule 74 with cases under No. 4001.

6794 " Last entry Sept. 25, 1901. Deposition filed by claimant. No appearance by M. & C.

6968 " Last entry Mar. 1, 1901. Motion by defendant to calendar under Rule 74 with cases under No. 4001.

6885 " Last entry Mar. 1, 1901 to calendar as above.

332

6920 " This case marked "Dismissed" is still Pending.
Nov. 17, 1903. Motion to substitute M. & C. with Power of Attorney filed. Allowed Dec. 28, 1903.
June 21, 1904. Claimant's substitute brief on Motion for new trial, etc., affidavits.
Dec. 12, 1904. Claimant's motion for new trial submitted.
Jan. 3, 1905. Above allowed. Loyalty found.
Mar. 17, 1905. Amended petition filed.
" " Claimant's request finding of fact. Brief on merits filed.

6947 " July 2, 1903. Motion to substitute Moyers & Consaul and Power of Attorney.
July 9/02. Ida M. & Consaul appear on brief as "of counsel."
Oct. 9, 1903. Motion of claimant for new trial on loyalty.
Dec. 12, 1904. Above argued and submitted.
Dec. 19, 1904. Loyalty Found.
Dec. 19, 1904. Cl'm't's motion for new trial on loyalty.

Dec. 28, 1904. Calls filed. Dec. 28/04 Petition filed.
Dec. 28, 1904. Petition filed; Mar. 24/05 Deposition filed.
Apr. 25, 1905. Cl'm't's request finding of fact.

6901 " Last entry Mar. 1, 1901. Motion to place on calendar under Rule 74.

6807 " Last entry Mar. 1, 1901. Motion to calendar as above.

6965 " Last entry June 18, 1904. Motion to consolidate with No. 11592. Moyers & Consaul attorneys of record for 11592.

6924 " Last entry Mar. 1, 190–. Motion to calendar under Rule 74.

7450 " Last entry May 1, 1901. Motion to calendar under Rule 74, with cases under No. 4001.

7463 " No entry since 1897. No appearance by Moyers & Consaul.

7946 " April 8, 1903. Depositions for claimant filed. No appearance filed by Moyers & Consaul. G. M. Att'y of record.

7807 " Last entry Mar. 1, 1901. Motion to calendar under Rule 74, with cases under No. 4001.

7828 " Last entry, Mar. 1, 1901. Motion to calendar as above.

333

7958 " Aug. 4, 1903. Motion to substitute Moyers & Consaul with Power of Attorney filed. Allowed.
May 16, 1904. Loyalty found.
Jan. 23, 1905. Depositions for claimant filed.
Jan. 30, 1905. Petition of claimant for finding of fact and Brief on merits.
Feb. 14, 1905. Report of War Dept.
Mar. 13, 1905. Report of Treasury Dept.

7936 " Sept. 19, 1903. Depositions for claimant filed. No. appearance by Moyers & Consaul.

7949 " Last entry June 20, 1901. Report of Treasury Dept. No appearance by Moyer & Consaul.

7486 " Apr. 11, 1903. Consaul & Ida M. Moyers appear on brief as of Counsel.
July 10, 1903. Motion to substitute M. & C. and Power of Attorney filed. Allowed July 13, 1903.
Dec. 23, 1903. Brief on loyalty.
Dec. 29, 1903. Reply brief on loyalty.
Jan. 4, 1904. Submitted on Loyalty.
Jan. 11, 1904. Dismissed.

7947 " No appearance other than G. M., but docket shows April 29, 1903, Brief of Claimant on loyalty filed and notice to defendants.

7466 " Last entry June 24, 1895. Motion Mar. 1, 1901 by defendants to place on calendar under Rule 74 with cases under No. 4001.

7806 " Last entry Mar. 1, 1901. Motion to calendar under Rule 74 with cases under No. 4001.

7480 " No appearance by M. & C. Last entry Oct. 16, 1902. Filing of depositions for claimant.

7845 " No appearance by M. & C. Last entry Mar. 21, 1900. Findings certified to Speaker of House $1336.00.

7492 " No appearance by M. & C. Last entry Clmts. Brief on loyalty Apr. 21, 1898.

8289 " Sept. 16, 1903. Motion to substitute Moyers & Consaul with Power of Attorney filed. Allowed Sept. 17, 1903. No entry since that date.

8440 " Sept. 8, 1903. Motion to substitute Moyers & Consaul with Power of Attorney filed. Allowed Sept. 9, 1903.
Jan. 6, 1904. Claimant's brief on loyalty.
Jan. 31, 1905. Defendant's brief on loyalty.

334

8400 " No appearance by anyone except Gilbert Moyers. Last entry call on H. R.

8463 " Last Entry Oct. 26, 1901. Notice to take testimony.

8635 " Aug. 15, 1903. Motion to substitute M. & C. with Power of Attorney filed. Allowed Aug. 19, 1903.
Aug. 20, 1903. Claimant's additional brief and affidavits.
Jan. 25, 1904. Claimant's motion for new trial on loyalty argued and submitted.
Feb. 1, 1904. Denied.

NOTE.—In this case Claimant's Reply brief on motion for new trial on loyalty filed in 1904, *are* signed by Gilbert Moyers and Ida M. Moyers and Consaul as of counsel.

9421 " Last entry Mar. 23, 1901. Motion of defendant to calendar under Rule 74.

9384 " Mar. 23, 1901. Motion to calendar under Rule 74, with cases under No. 9000.

9594 " No appearance by anyone except Gilbert Moyers.

10192 " Mo. to substitute M. & C. with power filed Sept. 14, 1903.

335 *Exceptions of the Complainant to Report of Auditor, &c.*

Filed May 31, 1906.

In the Supreme Court of the District of Columbia, Holding an Equity Court for said District.

Equity. No. 20802.

HORACE S. CUMMINGS, Administrator of the Estate of George B. Edmunds, Deceased, Plaintiff,

vs.

CHARLES F. CONSAUL ET AL., Administrators of the Estate of Gilbert Moyers, Deceased, Defendants.

First Exception. To so much of said report as allows the defendants credit for one-half of the alleged expenses incurred by their intestate (as set forth in Exhibit R. G. D. No. 1 filed before the Auditor) in the preparation and filing of documents such as calls and motions in the Court of Claims, on the grounds following, to wit:

(*a*) That said documents consisted of printed blanks which were filled in by said intestate, or by his clerks, and as there is no testimony to show the cost of such printing and the time required to fill in said blanks, it was improper to fix an arbitrary amount, as was done, for the preparation and filing thereof and to give the defendants credit therefor in this accounting.

(*b*) That the expenses incurred by the defendants' intestate, if any, in the preparation and filing of said documents were part of the office expenses of said intestate for no part of which his
336 estate is entitled to credit in this accounting.

Second Exception. To so much of said report as finds that a fee of ten per cent. (10%) of the amount of the recovery in the claim of the estate of Thomas Kidd is a fair and reasonable allowance to local counsel employed by Gilbert Moyers, deceased, and charges the complainant with an amount equal to one-half of said ten per cent. (10%) upon the grounds following, to wit:

(*a*) That by a proper construction of the partnership agreement of February 6th, 1888, between George B. Edmunds deceased, and Gilbert Moyers, deceased, the said Moyers was not, and the defendants as his administrators, are not entitled, under the circumstances, to credit for more than one-half of two and one-half per cent. of the amount of any allowed claim embraced in the partnership, when the expenses incurred by said Moyers exceeded that per centage; and such having been the case in the matter of the said Kidd claim the maximum amount allowable to the defendants is one-half of two and one-half per cent. of the amount paid by the United States in settlement of said claim, or $168.25.

(*b*) That no reason having been shown by said defendants or their intestate why local counsel (if the employment of such local counsel was necessary) should not have been paid a per diem com-

pensation for their services as was done by the said intestate in the prosecution of many of the other partnership claims, and no reason having been given for such employment on the basis of a contingent fee, it was improper to fix as a reasonable compensation to local counsel a per centage of the recovery arbitrarily fixed and
337 agreed to be paid by said intestate.

(*c*) That there is not in the record of testimony taken before the Auditor or elsewhere, competent or admissible testimony showing, or tending to show, that ten per cent. of the recovery was a reasonable fee to be paid local counsel.

Third Exception. To so much of the said Auditor's report as finds that the fee of one hundred dollars ($100) is a fair and reasonable allowance to local counsel employed by the defendants' intestate to assist him in the prosecution of the claim of the estate of Isaiah Beans and charges the complainant with one-half of said one hundred dollars ($100), upon the grounds following, to wit:

(*a*) That by a proper construction of the partnership agreement of February 6th, 1888, between George B. Edmunds, deceased, and Gilbert Moyers, deceased, the said Moyers was not, and the defendants as his administrators, are not entitled, under the circumstances, to credit for more than one-half of two and one-half per cent. of the amount of any allowed claim embraced in the partnership, when the expenses incurred by said Moyers exceeded that per centage and such having been the case in the matter of the said Beans claim the maximum amount allowable to the defendants is one-half of two and one-half per cent. of the amount paid by the United States in settlement of said claim, or $16.00.

(*b*) That no reasons having been shown by the defendants or their intestate why local counsel (if the employment of such was necessary) should not have been paid a per diem compensa-
338 tion for their services as was done by said intestate in the prosecution of many of the other partnership claims, in fixing the amount of compensation to be allowed for the employment of such counsel, the Auditor should have ascertained and found what would have been a fair and reasonable per diem compensation to be paid local counsel in the prosecution of said Beans claim.

(*c*) That there is not in the record of the testimony taken before the Auditor, or elsewhere, any competent or admissible testimony showing or tending to show that one hundred dollars ($100) was a fair and reasonable fee to be paid local counsel in the prosecution of said Beans claim, but that on the contrary as the testimony shows that the evidence taken by said local counsel consisted of only three printed pages of testimony, such allowance of one hundred dollars ($100) was unjust to the complainant and unreasonable.

Fourth Exception. To so much of the said Auditor's report as charges the defendants with one-half of four hundred and ninety-two dollars ($492) the fee received by their intestate in the matter of the claim of Joel C. Johnson administrator of Richard W. Johnson, instead of one-half of nine hundred and eighty-four dollars, the amount of fee that he should have received under the con-

tract between George B. Edmunds, deceased and the claimant on the grounds following, to wit:

(*a*) That the employment of local counsel by said intestate was expense incurred by said intestate in the prosecution of said claim and under the said partnership agreement of February 6th,
339 1888, said intestate was not entitled, nor are his administrators entitled, under the circumstances to credit for more than one-half of two and one-half per cent. of the amount allowed in settlement of said claim.

(*b*) That it was beyond the power of Gilbert Moyers, deceased, to bind the estate of his deceased partner to pay local counsel one-half of the fee of 50% provided for in the contract between said deceased partner and the claimant and having paid such counsel one-half of said fee, his administrators are not entitled to credit for such payment in this accounting with the estate of his deceased partner.

TUCKER & KENYON,
Attorneys for Complainant.

Stipulation of Counsel as to Time of Filing Exceptions.

Filed June 1, 1906.

In the Supreme Court of the District of Columbia.

Equity. No. 20802.

HORACE S. CUMMINGS, Administrator,
vs.
CHARLES F. CONSAUL ET AL., Administrators.

Counsel for the respective parties hereby stipulate this 29th day of May, 1906, that the defendants shall have ten days from this date within which to file their exceptions to the report of the Auditor filed herein on May 1st, 1906.

CHARLES COWLES TUCKER,
Solicitor for Complainant.
R. GOLDEN DONALDSON,
Per B. W. P.,
Solicitor for Defendants.

340 *Exceptions of Defendants to Report of Auditor of May 1st, 1906.*

Filed June 8, 1906.

In the Supreme Court of the District of Columbia.

Equity. No. 20802.

HORACE S. CUMMINGS, Administrator,
vs.
CHARLES F. CONSAUL ET AL., Administrators.

Now come the defendants, by their solicitors, and except to the Report of the Auditor of the Court filed herein on May 1st, 1906, and for cause thereof say:

1. It was error for said Auditor to refuse to allow defendants credit on account of the writing by Gilbert Moyers of the six hundred letters mentioned by the Auditor in his said report.

2. It was error to find that only ten per cent. of amount collected in the case of Kidd *vs.* The United States was a reasonable fee to be allowed and paid to W. A. Montgomery as local counsel for claimant, for the reasons (among others) (*a*) that the proven facts of the case, show that said Montgomery himself secured from the claimant the agreement whereby it was provided in express terms that he was to receive fifteen per cent. of collection as his fee, and that Gilbert Moyers should receive but 35% as his fee, and (*b*) because said sum of fifteen per cent. has already been paid said Montgomery by the receivers in this cause out of the draft issued by the United States Treasury in payment of said Kidd claim, for the reason that
341 said draft could not be secured by said receivers without paying said fifteen per cent. to said Montgomery.

3. It was error to find that in the case of Isaiah Beans, defendants should be charged with all the fee paid to O. I. Thomas, local attorney, in excess of One hundred dollars, and that complainant should be charged with but one-half of the sum of One hundred dollars, found by the Auditor to constitute a reasonable attorney fee to said Thomas, for the reason (among others) (*a*) that there was an express agreement on part of claimant to pay said Thomas and Gilbert Moyers, jointly, a fee of fifty per cent. of collection, and (*b*) it is error to gauge the value of services rendered by local counsel by the number of pages of testimony secured or taken by such attorney.

4. It was error to find that the case of Joel C. Johnson, Administrator of estate of Richard W. Johnson, was a case belonging to the alleged partnership of Gilbert Moyers and George B. Edmonds, for the reasons (among others) that there is no sufficient evidence upon which to base any such finding, the only evidence relied upon by the Auditor being the alleged fact that said Edmonds was at one time employed by claimant as attorney in the case and that the files of the Court of Claims show that said Edmonds filed a petition before Con-

gress praying the reference of said claim to the Court of Claims, while it is proven in evidence that said claim was not and could not have been referred to the Court of Claims upon said petition, which has expired previous to the convening of the Congress by which said claim was referred to said court.

COLE & DONALDSON,
Solicitors for Defendants.

342 *Auditor's Report.*

Filed December 21, 1906.

In the Supreme Court of the District of Columbia.

No. 20802. Equity.

HORACE S. CUMMINGS, Administrator of George B. Edmonds,
vs.
CHARLES F. CONSAUL ET AL., Administrators of Gilbert Moyers.

This cause is referred to the Auditor to ascertain and report whether the claims of Jane Edge, Lucy A. Caldwell and Herbert Smith were in fact partnership claims or what, if any interest the partnership had in them, and if partnership claims or if the partnership had any interest in them, to state the partnership account in respect to them. After due notice I proceeded with the reference.

With the original bill of complaint in this cause, there was filed a schedule marked Complainant's Exhibit No. 1, alleged to be the identical schedule of cases referred to in the agreement of partnership. The three claims or cases which are the subject of the present reference are set forth in the said exhibit. The records of the Court of Claims in these cases were submitted in evidence and copies of the docket entries of the said Court were filed and are returned with this report as exhibits. Some of the original papers, powers of attorney and fee agreements were also offered in evidence, but it seems unnecessary to consider these in detail in view of the fact that in the course of the first reference of the cause to the Auditor the defendant Gilbert Moyers produced and offered in evidence a "List of
343 Edmonds cases," which Moyers admitted to have received from George B. Edmonds and which were embraced in said partnership agreement. This schedule was returned with the report of the Auditor, being one of numerous exhibits offered and used in that reference, and since that time has disappeared. In the last reference to the Auditor, previous to the present one, an alleged copy of the said list was produced and offered in evidence. Upon the testimony of Mr. Tucker and Mr. Birney conclusively establishing the identity of the said list with the original schedule B as a true copy thereof, it was admitted in evidence and set forth in full in the Auditor's report and record filed May 20, 1906.

These three cases appear in that list or copy of Exhibit B. If there remained any doubt upon the testimony as to the genuine char-

acter and correctness of the copy, it is removed by a stipulation of counsel made the 23d of March 1904, and contained on page 386 of the printed record, in which, marked paragraph 8, the following appears:

"The defendant in the court below, produced before the Auditor under the reference ordered by the decree of the lower Court of June 13, 1900, a list of cases, which was marked "Exhibit B" and entitled, "List of Edmonds' cases," which contained the names of 225 cases, which he admitted he received from George B. Edmonds, deceased, and which were embraced in said partnership agreement of February 6, 1888. Said cases, as far as they went, correspond with the cases named in the schedule of cases offered in evidence in the Court below by the complainant and claimed by him to be the schedule or list referred to in said partnership agreement and attached
344 thereto."

I have to report therefore, that these three cases were in fact partnership claims and included in the agreement of February 6, 1888.

Gilbert Moyers prosecuted these cases after the death of Edmonds until the making of an agreement between himself of the one part and Ida May Moyers and Charles F. Consaul of the second part, a copy of which agreement is set forth on page 78 of the record of the present reference. This agreement sets forth that the said Moyers was at that time engaged in the practice of law and the prosecution of claims against the Government before the Court of Claims and before Congress, and desired the assistance of the parties of the second part in the conduct of said practice and business; the parties of the second part agreeing to contribute their professional services as lawyers to the said business beginning January 1, 1902. The said parties of the second part in consideration of their services to be rendered during 1902, were to receive one-half of the fees received by Moyers in cases upon which any of the parties to the agreement might render service during that year, Moyers to defray all the expenses incident to the said business during that period. For services rendered after 1902, the parties of the second part were to receive two-thirds of all attorney's fees received by Moyers from the said practice and business and should pay to him two-thirds of the expenses of operating the business.

The defendants claim that Gilbert Moyers abandoned the prosecution of the claims of Jane Edge and Herbert Smith and to
345 support this claim they submit the testimony of the defendant Consaul to the effect that Gilbert Moyers stated to him, the witness, that he would have nothing more to do with those cases for the reason that they were claimed to be partnership cases by the complainant in this cause. To further establish the abandonment of these cases by Moyers, evidence is offered to show that on the 21st of August 1902, Gilbert Moyers wrote to the claimant in the matter of Jane Edge enclosing documents for execution including power of attorney to Ida M. Moyers, and Charles F. Consaul and a fee agreement, and in the letter stating that the said Moyers and Consaul were associated with him, having filed previous briefs in the case, and that

they were familiar with the details and would have immediate personal charge of the conduct of the case before the Court; and that on the 18th of March 1903, Gilbert Moyers wrote to the daughter of Herbert Smith, who had then died, suggesting her appointment as administratrix of his estate and enclosing to be then executed by her, a power of attorney to Ida M. Moyers and Charles F. Consaul together with a fee agreement, stating that they then had charge of the case.

Gilbert Moyers died on the 13th of June 1903, and the said Ida M. Moyers and Charles F. Consaul were appointed administrators of the personal estate. They had also, as individuals, formed a partnership for the prosecution of claims and other legal business and now contend that the prosecution of these two claims, Edge and Smith, were not as administrators but in their personal capacity as partners.

The alleged proof of the abandonment of these claims by Moyers is not sufficient or satisfactory. The letters to the claimant
346 in these two cases to which I have just referred, do not indicate an abandonment by Moyers, but on the contrary, an intention to continue the prosecution of the claims with the assistance of Ida Moyers and Consaul as the cases had been conducted during the previous period, and the loose declarations of Moyers testied to here, do not constitute an abandonment of the claims.

Underlying all this, however, is the serious question whether Moyers could have transferred these claims to other attorneys with a complete abandonment on his part. In determining the rights and obligations of the parties here, it is essential to bear in mind what the Court has established as fundamental in this case, as well as to keep in view the terms of the original agreement between Moyers and Edmonds, and the conditions under which it was made.

Both of these parties were prosecuting the same class of claims against the Government. Edmonds had a considerable number of such claims in his charge and control with powers of attorney and fee agreements. It is fair to assume that both parties saw advantages in a combination of interest in regard to these claims, Edmonds transferring to Moyers an interest to the extent of one-half of the fees in consideration of the prosecution of the claims by Moyers. Edmonds contributed his share to the joint business and Moyers was bound to carry out his undertakings, the contract being executed on the part of Edmonds and to be complied with on the part of Moyers.

The Court of Appeals has said as to the rendition of services,
347 the defendant Moyers had construed the contract by declaring that he did not expect Edmonds to render any services in the prosecution of the claims.

The rights of Edmonds as already judicially established, on his death passed to his administrator, and equally on the death of Moyers, his contract undertakings passed to his personal representative, and Moyers would not be allowed to defeat the rights of the complainant by any subterfuge such as the transfer of the claims to other hands than his own.

We are dealing here, however, with conditions and not con-

tingencies and Moyers participated in the prosecution of the claims in connection with Ida Moyers and Consaul under their joint agreement until his death. They continued such prosecution after his death, claiming now to have done so as individual partners.

As Moyers was trustee for the estate of his deceased partner in the matter of these claims, that trust must be treated as having been assumed by his administrators and clearly they could not defeat the claims of the complainant as beneficiary of the trust, by claiming the benefits of the business in their personal capacity.

I find, therefore, that in these two cases the complainant is entitled to one-half of the fees collected and have stated an account in accordance with this finding in the schedule herewith.

Coming to the case of Lucy A. Caldwell, it appears that the claim was prosecuted by Moyers until early in the year 1903, with the assistance of course, during part of the time, of Ida Moyers
348 and Consaul. It appears that in the early part of that year the administratrix of Mrs. Caldwell, who had died in the meantime, corresponded with Mr. Ralph W. Haynes who procured from her an order upon Gilbert Moyers to transfer all the papers relating to the said claim to him, Haynes, obviously with a view of placing the claim in his hands for prosecution. Haynes however, agreed to prosecute the claim jointly with Gilbert Moyers and after the death of Moyers which occurred on the 13th of June 1903, Haynes procured from the claimant a power of attorney to himself and Moyers and Consaul authorizing himself and them to prosecute the claim. At that date as appears from the records of the Court of Claims, services in the matter had been rendered by Moyers down to the 2d of April 1903, when on motion all the papers in the cause were transferred to and this case consolidated with a claim numbered 11,146 under a resolution of Congress referring the case under an Act of Congress known as the Tucker Act. Gilbert Moyers had appeared in the latter case in March and on the 10th of April, after the consolidation of the two cases, he filed a request to enter Haynes as of counsel. All of the testimony had been taken and a request made by the attorney for claimants, for findings of facts. In July Lucy J. Eaton was substituted as executrix and on the same day motion was made to substitute Moyers and Consaul as attorneys of record, with a power of attorney from the claimant filed. The only steps taken in the case by these attorneys were the filing of a substitute brief and an abstract of testimony on loyalty and an oral argument on loyalty and merits.

The Court found in favor of the claimant for the sum of $4250, out of which the attorneys were entitled to a fee of one-half
349 but in the adjustment with the claimant, $150 was allowed to her for expenses incurred and $175 paid to a firm of local attorneys, leaving $1800 of the fee for disposition to the attorneys. This was amicably divided between Haynes who received $750 and Moyers and Consaul who received $1050.

Testimony of witnesses is submitted here by the defendants as to the value of the services rendered by the firm of Moyers and Consaul in the matter of this claim and will be found in the record

herewith. Before applying this evidence to the question, it is proper to note that the only services which can be treated as rendered by Moyers and Consaul acting as partners in their personal capacity and not as administrators was the filing of the brief which consists of six pages of argument and twenty-three pages of abstract of proof. A feature of the case very elaborately set forth in the testimony of the so-called expert witnesses and in the argument of the defendants here, is that there were serious doubts of the loyalty of the original claimant, and we are pointed to the facts appearing in the record that adverse reports of the War Department were made at different dates. It appears that the issue of loyalty was the principal subject of the brief and argument of Moyers and Consaul, and it is claimed that this practically achieved success in a case that at the time of the death of Moyers was more than doubtful. The records of the Court of Claims show that sundry charges of disloyalty were alleged against Lucy A. Caldwell, but they also show that in the taking of testimony by Gilbert Moyers or under his direction, that is to say in
350 cross-examination of witnesses for the Government, it was developed that there existed in the neighborhood of the claimant's residence, another party of the same name and this fact coupled with the testimony which Moyers had procured and submitted in behalf of the claimant, carried a strong presumption that the said charges of disloyalty or the occurrences upon which they were based, related to the other Caldwell and not to the claimant. Moyers and Consaul used that evidence in their brief.

In the claim of Herbert Smith, it appears that after the death of Gilbert Moyers the firm of Moyers and Consaul having entered their appearance for the claimant, filed a brief on merits in reply to the brief filed by the defendants, all other briefs having been filed and evidence taken while Gilbert Moyers was responsible for the prosecution of the claim. The case was then submitted on evidence and briefs. I do not find the defendants entitled to compensation as individuals or as partners for these services holding, as I do, that as administrators they were bound to render the services which their intestate had undertaken to perform and for which he had received a substantial consideration from the intestate of the complainant.

In the Caldwell case we encounter different conditions. It is possible that upon the death of both of the original attorneys the claimant had the right to place her claim in the hands of other attorneys, so effectually as to deprive the original attorneys and their associates, of the right to control the claim, and this right she exercised in part, by the employment of Haynes. While this fact coupled with his association with Moyers in the prosecution of the claim does not operate to relieve the associates of Moyers from their
351 obligations under the partnership agreement, Haynes would be entitled to an equitable portion of the fee collected. I am of the opinion that a fair division of this fee would have been into three parts, that is equal division between Haynes, the estate of Moyers, and the complainant, but the division between Haynes and the defendants was not in that proportion. Haynes cannot now be charged with any allowance to the defendants for services rendered

by them after the death of Moyers, and it would be difficult to adjust the division of the remainder of the fee between the administrators of Moyers and the Complainant with an allowance of any sum for such services.

Under the conditions existing in this matter, I find that fair adjustment would allow the Complainant one-half of the fee remaining after the payment to Haynes, in other words an equal division of the amount taken by the defendants and I have so stated the accompanying account.

In the claim of Jane Edge or J. T. Edge Administrator the findings of the Court of Claims and the amount collected was $817 of which the defendants took one-third.

In the claim of Herbert Smith or Sallie J. Adams administratrix, the finding of the Court was $1826 which was collected, the fee being one-third.

Auditor's fees	$45.00
Testimony	82.50
	$127.50

JAS. G. PAYNE, *Auditor.*

352 *Account of the Partnership in Respect to the Claims of Jane Edge, Herbert Smith and Lucy A. Caldwell.*

Amount of fee collected in the claim of Jane Edge by Charles F. Consaul and Ida M. Moyers, Administrators of the estate of Gilbert Moyers	$607.66	
Share of the Complainant Administrator, one-half		$303.83
Amount of fee collected in the claim of Herbert Smith by said Consaul and Moyers, Administrators	272.33	
Share of the Complainant, One-half		136.16
Amount of fee collected in the claim of Lucy A. Caldwell by said Consaul and Moyers, Administrators	1,050.00	
Share of the Complainant, One-half		525.00
Total due the Complainant		$964.99

JAS. G. PAYNE, *Auditor.*

353 In the Supreme Court of the District of Columbia.

H. S. CUMMINGS
v.
CHARLES F. CONSAUL, Administrator.

Evidence on Behalf of the Complainant.

On Tuesday, November 28th, 1905, the following testimony was taken on behalf of complainant before the Auditor: Mr. C. C. Tucker appearing for complainant, and Mr. R. G. Donaldson appearing for defendant, with whom was Mr. Charles F. Consaul in *pro. per.*

Stipulation.

It is agreed between counsel for the respective parties that the Court of Claims papers in the cases of Jane Edge *v.* U. S., Cong. No. 6847; Lucy A. Caldwell *v.* U. S. No. 2028 and No. 11146; and Herbert Smith *v.* U. S., Cong. No. 4449, are before the Auditor subject to inspection by him and by counsel for the respective parties; and that there are also produced by the defendant the office papers of Gilbert Moyers, deceased, and of Moyers & Consaul, in the same claims, subject to inspection, and to be offered in evidence as the parties may be advised; all of said papers being part of the files and records of the Court of Claims of the United States; and it is stipulated and agreed by and between the parties hereto that the same shall be returned to the files of said court forthwith, and that all or any of said papers may be produced, read and referred to by either of the parties hereto at any hearing of this cause in any court.

354 Mr. TUCKER: I direct attention to the passing of a decree of the court in this case February 5th, 1903, reserving to the complainant the right to apply to the court from time to time for an order or orders for the payment of such other and further sums of money as *he* may come into the hands of the defendant as surviving partner of the partnership heretofore adjudged to have existed between the said defendant and said George B. Edmonds' estate or into the hands of the receiver or receivers appointed herein or which may hereafter come into the hands of said defendant or said receivers, or either of them, and which may be due to the complainant as administrator of defendant's said deceased partner George B. Edmonds by reason of the existence of said partnership, etc.

Mr. DONALDSON: I object to any reference whatever to that decree, as being wholly immaterial upon this reference. This last reference, under which this hearing is had, is to ascertain whether the three particular claims in dispute (viz: the Edge, the Caldwell, and the Smith claims) are partnership claims.

Mr. TUCKER: I also direct attention to the order of the court passed on July 10th, 1903, by which defendants Charles F. Consaul

and Ida M. Moyers, administrators of said decedent Gilbert Moyers, were substituted as defendants in this cause, in lieu of said Gilbert Moyers.

Stipulation.

It is agreed between counsel for the respective parties that Gilbert Moyers died on the 13th day of June, 1903; that he died intestate, leaving as his sole next of kin, his daughters Ida May Moyers
355 and Fannie M. Consaul, wife of the substituted defendant, Charles F. Consaul; and that thereafter the defendants Ida M. Moyers and Charles F. Consaul were appointed and qualified as administrators of said Gilbert Moyers, deceased.

Mr. TUCKER: I now offer in evidence so much of Exhibit B, as is set out on pages 100 to 107, inclusive, as contains the following entries or names:

"2028, Lucy N. Caldwell, L. J. Eaton, and Clifford C., pending.

"6847, Jane Edge, pending.

"4499, Herbert Smith, pending."

The original of which said Exhibit B was offered in evidence by the defendant Gilbert Moyers before the Auditor on August 8th, 1900, as containing a list of cases he admitted to have received from George B. Edmonds, deceased. Reference to said Exhibit B will be found on pages 222, 223, and 226 of the printed record in this cause pending — the Court of Appeals.

I also offer in evidence paragraph 8 of the stipulation of counsel in this cause, filed in the Court of Appeals, contained on pages 384, 385 and 386 of said printed record, which said paragraph reads as follows:

"The defendant in the court below produced before the Auditor, under the reference ordered by the decree of the lower court of June 13, 1900, a list of causes which was marked Exhibit B and entitled 'List of Edmonds' cases,' and which contain the names of 225 cases which he admitted to have received from George B. Ed-
356 monds, deceased, and which were embraced in said partnership agreement of February 6th 1888."

I also offer in evidence the remaining paragraphs of said stipulation, and direct particular attention to Paragraph 4.

I also direct attention to the testimony of C. C. Tucker with reference to said Exhibit B and other exhibits contained on page 96 of the testimony taken before the Auditor under the order of court of January — 1905.

I also direct attention to the following testimony of Gilbert Moyers, deceased, given before the Auditor on October 24, 1900, (pp. 241 and 242 of said printed record) in support of his claim for credit for expenses incurred by him in the prosecution of the partnership claim of Lucy A. Caldwell:

"Q. In the case of Lucy A. Caldwell, the testimony seems by the record to have been taken at Little Rock, and Saul Clark appeared for the claimant, and if he appeared for you, state what you paid him.

He appeared for me, and I paid him at different times for his vices different sums as he would render an account.

Q. What was it all told? A. I think $10., which was his usual rge.

Q. In the case depositions were taken at Plumbayou, Arkansas, ere White and Altheinor appeared for the claimant. Did they appear also for you, and if so, how much did you pay them?

7 A. They appeared for me, and I instructed them what to do, gave them the history of the case, and paid them.

Q. How much? A. $10.

Q. In the same case testimony was taken at Fort Smith by Sol. rk for the claimant. Did you pay him, and if so, how much? I do not recollect that name. I will have to examine the data d make a more definite answer as to that."

Mr. TUCKER: In behalf of complainant I offer in evidence all of e papers of the Court of Claims in the matter of the claim of ncy J. Eaton, executrix of Lucy A. Caldwell, Cong. Nos. 2028 and 146, or so much of them as either party hereto may desire to in-oduce.

Stipulation.

It is here stipulated between counsel that the recitals of the offer every such paper shall be taken to be a correct recital of so much the contents thereof as are recited, with the understanding and greement that either party may produce and file as evidence herein ll copies of any such papers, proof of originals being waived.

Mr. TUCKER: I take from the files of the Court of Claims in the aldwell case and offer in evidence a petition filed in that court Stamped "Filed September 8, 1887) by L. J. Eaton, Fannie S. homas and Clifford Caldwell, Executors of the late Lucy A. Cald-ell, deceased, for an allowance of their claim for stores and supplies aken by the United States from their decedent during the Civil War,

58 which said petition is signed "George B. Edmonds, attorney for petitioners, Washington, D. C." and which was sworn to by Edmonds before William Selvy, a Notary Public, on the th of September, 1887.

I also take from the files of the Court of Claims in said Caldwell ase and offer in evidence a paper stamped "Filed September 8, 887," entitled in the cause, which is addressed to the Court of laims and reads as follows:

"I would like to have my time extended for filing petition in this ase to the 15th of September, 1887.

GEORGE B. EDMONDS,
Attorney for Petitioner."

I also take from the files of said court and offer in evidence a power f attorney, stamped "Filed September 8, 1887," from Lucy J. Eaton nd Clifford Caldwell, daughter and son of the late Mrs. Lucy A. Caldwell, deceased, to George B. Edmonds, of Washington, D. C., uthorizing him to prosecute the claim of the late Mrs. Lucy A. Caldwell, deceased.

I offer in evidence copies of the docket entries of the Court of Claims in the case of Lucy A. Caldwell, *v.* U. S., also known as the estate of Lucy A. Caldwell *v.* U. S., Cong. Nos. 2028 and 11146, marked Exhibits H. S. C. No. 1.

Stipulation.

It is stipulated between counsel that proof of the original docket entries is waived and that said copies shall be accepted as evidence, subject, however, to comparison by the defendant with the originals, if he shall see fit to make such comparison, and to correction hereafter if any error in copying is shown to exist.

359 *Stipulation.*

It is hereby stipulated and agreed by and between counsel that the Court of Claims papers in said Caldwell case show that Gilbert Moyers appeared as attorney of record in said cause and prosecuted the same as sole attorney of record in said court down to April 10, 1903, when the following motion was filed in said court.

"Now comes Gilbert Moyers, attorney of record in the above entitled cause, and moves that R. W. Haynes be entered as of counsel therein.

Respectfully submitted, GILBERT MOYERS,
Attorney for Claimant."

Mr. TUCKER: I offer in evidence Claimant's request for finding of facts and brief on merits filed in the Court of Claims May 22, 1903, consisting of twenty-two typewritten pages of argument, and signed "Gilbert Moyers, attorney for claimant."

I also offer in evidence, as the only paper or document filed in the Court of Claims after said May 22, 1903 and before Gilbert Moyers' death on June 13, 1903, claimant's reply to defendant's brief on loyalty, filed May 23, 1903, consisting of nine typewritten pages of argument, signed, "Gilbert Moyers, attorney for claimant."

As showing what steps were taken in said Caldwell cause in the Court of Claims, after the death of Gilbert Moyers, I offer in evidence, in addition to the docket entries heretofore offered in evidence, the following described papers:

360 1. A printed form, filed July 3, 1903, containing the caption of the case, and reading as follows: "Motion to substitute attorneys. Come now Moyers & Consaul, suggesting the death of Gilbert Moyers, Esq., the former attorney of record in this cause, and move that they be substituted as the attorneys of record herein. A power of attorney from the party in interest to Moyers & Consaul and R. W. Haynes is filed herewith. Respectfully submitted. Moyers & Consaul, attorneys for claimant. R. W. Haynes, of counsel." All of said motion is printed, save the signatures "Moyers & Consaul" and "R. W. Haynes," and the name of the claimant and number of the cause.

2. Printed form of power of attorney, properly filled in, from Mrs. L. J. Eaton to Moyers & Consaul and R. W. Haynes, to prosecute the case, which said power of attorney is signed by Mrs. Eaton June 29, 1903, and acknowledged by her before a notary in the County of Lonoke, State of Arkansas, on the same date, and is stamped "Filed in the Court of Claims July 3, 1903."

3. A typewritten motion, filed July 6th, 1903, by Moyers & Consaul, attorneys for claimant, and R. W. Haynes, of counsel, to substitute the executrix as the formal party claimant in the cause, which said motion embodies the caption of the cause and nine lines of typewriting in addition to the signatures of counsel.

4. The original of the letters testamentary of Lucy J. Eaton, Mary T. Thomas, and Clifford Caldwell, as executors of Lucy A. Caldwell, executed by the county clerk of the Probate Court of Jefferson County, Arkansas, January 14, 1878, consisting of
361 one printed page, on the back of which is endorsed a certificate dated June 29, 1903, of the then clerk of said court, that the said letters testamentary are still in full force and effect so far as concerns said Lucy Jane Eaton, and that her co-executrix, Mary F. Thomas and her co-executor, Clifford Caldwell, are dead.

5. A substitute brief on loyalty signed by Moyers & Consaul, attorneys for claimant, and R. W. Haynes, of counsel, filed July 25, 1903, consisting of twenty-nine typewritten pages of abstract of testimony and argument, the abstract of the testimony taking up twenty-three pages and six lines of the brief, the remainder of the brief being included under the head of "General Remarks."

6. Typewritten petition of Lucy J. Eaton to the court, filed September 25, 1903, and signed in the claimant's name by Charles F. Consaul, attorney, sworn to by Mr. Consaul on September 25, 1903, and consisting of two typewritten pages.

7. A report of the Treasury Department, stamped "Filed October 22, 1903," consisting of two letters, one from the Auditor for the War Department to the Secretary of the Treasury, dated October 22, 1903, and consisting of one typewritten page, and the other being a letter from the acting Secretary of the Treasury, dated October 24, 1903, to the Attorney General, consisting of one typewritten page.

8. A report of the War Department, filed October 20, 1903, consisting of a printed form of one page, and an endorsement by the Quartermaster General U. S. A., dated September 29, 1903, consisting of thirteen typewritten lines. (The docket entries show that the said Caldwell case was argued and submitted to the Court
362 of Claims on loyalty and on the merits March 1, 1904.)

9. Finding of the Court of Claims, filed March 14, 1904, in favor of the claimant for $4,250.

10. A typewritten motion, filed March 24, 1904, entitled in the cause, being a motion to transmit findings of fact to the President pro tem of the Senate, signed by Moyers & Consaul, attorneys for claimant, which said motion, in addition to the caption of the cause, consisted of six typewritten lines. (The docket entry of March 24,

1904, findings certified to the President pro tem of the U. S. Senate, will be found in an endorsement on the back of findings filed by the court.)

I offer in evidence copies of the docket entries of the Court of Claims in the cases of Jane Edge *v.* U. S., Cong. No. 6847, and Herbert Smith *v.* U. S., Cong. No. 4499, marked Exhibit H. S. C. No. 2 and H. S. C. No. 3, respectively.

Stipulation.

It is stipulated between counsel the proof of the original docket entries is waived, and said copies shall be accepted as evidence, subject, however, to comparison by the defendant with the originals, if he shall see fit to make such comparison, and to correction hereafter if any error in copying is shown to exist.

Stipulation.

It is agreed by and between counsel that in the case of Herbert Smith v. U. S., Cong. No. 4499, no person other than Gilbert Moyers appeared as attorney for claimant in said cause up to and
363 including March 16, 1903, except that Charles F. Consaul and Ida M. Moyers appeared in reply brief on Loyalty filed for the claimant February 12, 1903, as of counsel, and that thereafter the following proceedings were had in said cause.

1. On May 23, 1903, a motion was filed by Charles F. Consaul, attorney for claimant, and I. M. Moyers, of counsel, in the name of Mrs. Sallie J. Adams, suggesting the death of the original claimant Herbert Smith, representing that she was his administratrix, and moving that she be substituted as party claimant in the cause; which was allowed under the rules of the court.

2. On the same date (May 23, 1903) a typewritten petition was filed, in the name of the substituted claimant, by Charles F. Consaul, her attorney, and verified under oath by Mr. Consaul, and notice was given to the defendant.

3. On the same date (May 23, 1903) a power of attorney from Sallie J. Adams to I. M. Moyers and C. F. Consaul to prosecute the case in the Court of Claims was filed in that court.

4. On the same date (May 23, 1903) a motion was made by Charles F. Consaul that he be substituted as attorney of record in the cause. Said motion was filed, signed by Mr. Consaul and by I. M. Moyers, of counsel, and was endorsed as follows: "I assent to allowance of said motion. Gilbert Moyers, attorney of record."

5. May 23, 1903, claimant's request for findings of fact and brief on the merits was filed, signed by Charles F. Consaul, attorney for claimant, and consisting of thirty pages of typewritten brief
364 and argument.

6. Thereafter, namely, on July 31, 1903, defendant's brief on merits was filed; and on August 11, 1903, claimant's reply brief on merits was filed; and the cause was submitted, and there was a finding for the claimant.

Complainant calls upon the defendant to produce the office dockets of Gilbert Moyers containing the entries in the cases referred to (namely, Caldwell, Edge, and the Smith claims) at the next hearing in this case.

Adjourned.

CUMMINGS
vs.
CONSAUL.

SATURDAY, *December* 9, 1905.—10:30 a. m.

Hearing pursuant to notice.
Present Mr. Tucker and Mr. Consaul.

Mr. GEORGE W. Z. BLACK, having been sworn testified as follows:

By Mr. CONSAUL:

Q. What is your occupation, Colonel Black? A. Lawyer.
Q. Have you any special line of practice? A. I have.
Q. State what that is? A. The prosecution of war claims before the United States Court of Claims.
Q. For how long has that practice been your specialty? A. For thirty-one years.
365 Q. Please state whether or not during that time your entire practice or practically your entire practice has been made up of these cases, of civil war claims? A. It has.
Q. Please state as near as you can about how many claims of civil war nature under the Bowman and Tucker Acts you have prosecuted to final settlement? A. I have prosecuted several hundred, probably not less than one thousand.
Q. Please state whether or not you have examined the files of the Court of Claims in the matter of Case No. 11,146 Lucy J. Eaton executrix of the estate of Lucy A. Caldwell, deceased, *vs.* the United State? A. I have.
Q. State whether or not you have made such an examination of the said files as to familiarize yourself with the services performed by counsel in that case? A. I have.
Q. Please state from your examination of these papers what would be a fair proportion of the entire attorney's fee to the firm of Moyer and Consaul in said case, performed after their substitution as attorney of record. A. I think they would be entitled to all from the fact that the case, as I recall it had been lost by the former attorney, probably some small portion might properly go to the former attorney.
Q. Please explain just what you mean by stating that the case had been lost by the former attorney, that is, as to whether you
366 mean the case had been tried and lost? A. As I recall the case, it had been tried and lost on the preliminary question of loyalty, which under the law required the Court to dismiss the case from further proceedings.

Q. I will ask you now to please look into the papers for the purpose of correcting an erroneous impression or recollection as to the exact nature of the case, I will call your attention to the fact that the case had been prepared for trial by the former attorney, but had not been tried. A. I went through all these papers and my recollection was that the case was tried and lost on the subject of loyalty, in order to correct that, I will have to go through them all again before I could correct that impression, I could not do it on the spur of the moment, either in justice to myself or you, and there are a good many papers here. On re-examination of the papers I ascertain that it had been prepared for trial.

Q. Please state whether at the date of Gilbert Moyers' death, June 13, 1903, the case was in proper shape for a trial that is whether the case had been properly prepared as it should be prepared by counsel for the claimant? A. That is somewhat in the nature of expert testimony, it will take half a day to go through these papers and make up an answer that will be fair and intelligent, I am willing to sit here and do, I might as well do it one time as another. I will have to go through these in a minute manner in order to answer your question as to whether the case was properly prepared.

Mr. CONSAUL: I withdraw that question.

367 Q. In view of the fact stated by you and disclosed by your examination of the papers at the witness table, that the case had not been previously tried on the issue of loyalty what have you to say as to what would be a reasonable proportion of the total attorney's fees to be paid to the firm of Moyers and Consaul for services rendered after the death of Colonel Moyers.

Mr. TUCKER: I object on the ground that the witness by his own statement of his unfamiliarity with the papers and records in this case is incompetent to express an opinion that would be of any value at all.

The AUDITOR: The ruling is reserved.

A. My opinion is that they would be entitled to two-thirds of the fee.

Q. In the consideration of the Bowman and Tucker Act cases before the Court of Claims what effect upon the prosecution of the claim before that Court is usually given to a report from the War Department or any other department indicating that the original claimant had subscribed for confederate bonds.

Mr. TUCKER: I object as immaterial and irrelevant and not the subject of expert testimony and as calling upon the witness to testify as to the mental processes of the Judge of the Court of Claims.

A. Very great weight is given to such reports, and usually reports in regard to subscription to confederate bonds proves fatal to a case.

Q. I will ask you if you have made any examination of the papers, being the Court of Claims files in the case No. 6847 before

368 that Court J. D. Edge administrator of Jane E. Edge? A. I have.

Q. What would you say would be a reasonable proportion of any total attorney fee earned by Moyers & Consaul for services rendered

in said case subsequent to their substitution as attorneys of record? A. I should say that they would be entitled to one-half of the fee as my recollection is that the preliminary question of loyalty had been passed upon by the Court at the time of their substitution.

Q. Please state whether or not you have examined the files of the Court of Claims in case No. 4499 Congressional Sally J. Adams administratrix of the estate of Herbert Smith? A. I have.

Q. Please state what would be the reasonable proportion of any total attorney fee in said case earned by Moyers and Consaul subsequent to their substitution as attorneys of record? A. In my judgment they would be fairly entitled to one-half of the fee.

Cross-examination by Mr. TUCKER:

Q. You have heretofore testified in this case, have you not? A. I have.

Q. How long have you known the late Colonel Moyers? A. I have known him for a great many years.

Q. Had you had any business relations with him?

369 Mr. CONSAUL: We object as being wholly immaterial, irrelevant and incompetent.

A. I might say that I had in a limited sense, I don't remember any thing particular to that extent.

Q. Did you ever occupy the same offices with him in your practice? A. Not that I remember.

Q. Were you ever associated together in the prosecution of these Bowman and Tucker Act cases? A. I don't believe that we ever were in any particular case, or any case in fact as associate counsel.

Q. Where is your office now? A. 1425 New York Avenue.

Q. How long have you known Mr. Consaul and Miss Moyers? A. I have known them for several years, I don't exactly remember how long, probably I should say six or seven years, probably a little longer, probably a little less.

Q. Prior to Colonel Moyers' death were Mr. Consaul and Miss Moyers in Colonel Moyers' office.

Mr. CONSAUL: I object as immaterial.

A. Well I believe they were.

Q. Do you know in what capacity? A. I do not.

Q. Did the present firm of Moyers and Consaul, composed of Mr. Charles Consaul and Miss Ida Moyers exist prior to Colonel Moyers' death, *you* you know? A. I could not say.

Q. How thorough an examination have you made of the records in the Court of Claims in the matter of this Caldwell claim?

370 A. I went over all the papers in the case.

Q. Did you examine each paper taken from the files of the Court of Claims in this case from the inception of this case to the date of the findings? A. I examined the papers, but I did not make a careful examination of some of them because some have really no bearing on the case.

Q. At the date of Colonel Moyers' death, June 13, 1903 what was the state of the case so far as its prosecution was concerned, that

is how far had the prosecution reached, to what stage? A. It seems to have reached, not to have reached the stage where it was finally prepared for trial on the question of loyalty, but I was under the impression that that case had been tried on the question of loyalty, but I find upon a further examination of the record, that such was not the case.

Q. What if any depositions had been taken in the case prior to Colonel Moyers' death? A. It will be necessary for me to look through the papers again, I did not make any memorandum of it, and I cannot answer without going over the papers again.

(It is conceded by the defendants in the case that no depositions were taken in the Caldwell case subsequent to the death of Gilbert Moyers and that depositions were taken in the case prior to his death.)

Q. Please state from the papers, the Court of Claims papers in this Coldwell case what was the first step taken by Miss Moyers and Mr. Consaul after Colonel Moyers' death, June 13, 1903. A.
371 The first step that seems to have been taken was the filing of a substitute brief on loyalty by Moyers and Consaul as successors of Gilbert Moyers on July 25, 1903.

Q. A typewritten brief? A. A summary of the evidence.

Q. It consists of how many pages of typewritten matter? A. Twenty-nine.

Q. It is a summary of what evidence? A. A summary of the evidence taken before the Southern Claims Commission so called and other evidence taken prior to the death of Gilbert Moyers.

Q. What would you say would be the reasonable charge for the preparation of such brief or summary of evidence?

Mr. DONALDSON: I object as immaterial and irrelevant and incompetent and as throwing no light on the issues involved in this reference.

A. That is so interlaced with the duties of the attorneys that it is difficult if not impossible to express any opinion on that particular point.

Q. I understand, you are then unable to express any opinion as to what would be a reasonable charge for preparing such a brief? A. I am; I have never heard of a charge being made for such work, a separate charge, it is embraced in the attorney's general conduct of the case; I never heard of a brief being prepared separately, I never had one prepared outside of my office.

Q. You are absolutely unable to give us any opinion as to the value of the preparation — such a brief as that? A. I have
372 never had one prepared.

Q. Tell us the next step Miss Moyers and Mr. Consaul took in the case, as shown by the papers, in the Court of Claims. There was no reply brief filed by the United States Attorney on the subject of loyalty, was there? A. Yes, there was one filed November 6, 1903.

Q. What was the next step after the filing of this summary of evidence in July? A. A trial of the case in Court.

Q. Do the papers so show? A. I don't suppose the papers would show.

Mr. DONALDSON: All this line of examination, calling upon this witness to state what the record in the Court of Claims shows is objected to for the reason that the full and complete record in each of these cases in the Court of Claims is here in the case and are the best evidence of what they show.

A. It would be difficult for me to answer that question intelligently without looking at the docket.

Q. Do the papers show that? A. I do not think that the papers show that in any case.

Q. What papers were filed in this case by Mr. Consaul and Miss Moyers after the filing by them of this brief on loyalty that you have referred to, tell us what papers were filed after this reply brief was filed. A. The case came on for trial on this brief.

Q. On the subject of loyalty? A. And merits.

373 Q. What services then do the papers before you, taken from the files of the Court of Claims show that Moyers and Consaul performed after Colonel Moyers' death? A. The papers show that they prepared briefs and tried the case.

Q. Prepared briefs or a brief? A. A brief.

Q. On the subject of loyalty and merits? A. Covered both points.

Q. As disclosed by the files of the Court of Claims in this Caldwell case what if any professional services did Mr. Consaul and Miss Moyers perform other than the preparation and filing of this twenty-nine page typewritten brief and the argument of the case in the Court of Claims? A. None except that, that covered it as I stated.

Q. Upon what have you based your opinion expressed in your direct examination that Mr. Consaul and Miss Moyers were entitled to two-thirds of the fee in this case?

Mr. CONSAUL: Objected to because it misstates the statement of the witness as the witness previously testified as to the value of the services of the firm of Moyers and Consaul.

A. For the reason that it was a very difficult case and necessarily must have required a great deal of skill in order to have secured an allowance and for the further reason that after allowance is secured, it is a very difficult matter to get an appropriation from Congress to pay the claim.

374 Q. Upon what do you base the statement that it was a very difficult case, upon what is disclosed by the files of the Court of Claims? A. I might say the files of the Court of Claims, yes that would I suppose cover it, including the reports from the War Department and from the record there.

Q. When you expressed the opinion that Mr. Consaul and Miss Moyers were entitled to two-thirds of the fee for the services they performed after Colonel Moyers' death, is your opinion based upon what the files of the Court of Claims show they did in that Court, namely the filing of this reply brief and the argument of the case? A. Not wholly.

Q. On what is it based? A. It is based upon the further fact that

the trial of this case as I stated before, must necessarily have required a great deal of skill, and further fact that there is only one such case in a thousand that could be gained in that Court, and in the second place as before stated the necessity of securing an appropriation from Congress to pay it required a great deal of work.

Q. Do the papers filed, before you, show that the case was orally argued in the Court of Claims? A. The papers do not.

Q. Does the docket show? A. My recollection is that the docket does show that.

Q. Do you know as a matter of fact whether the case was orally argued? A. I do not.

375 Q. Then you are expressing your opinion in regard to the fact as to whether or not there was an oral argument of this case made before the Court of Claims?

Mr. DONALDSON: I object because the testimony is clearly upon the assumption that an oral argument was made.

A. It is based upon the general knowledge of such cases.

Q. Have you, or do you know anything as to the extent or how long it lasted? A. I do not.

Mr. CONSAUL: I object because the reasonable value of services of attorneys in making arguments are not measured by the hour or by the yard.

Q. Do you know what the fee was in this case? A. I do not.

Q. And it is your opinion that Mr. Consaul and Miss Moyers would be reasonably entitled to two-thirds of the fee, it makes no difference what it was? A. I do.

Q. What would you say would be the cash value of such services as it appears from the record of the Court of Claims that Miss Moyers and Mr. Consaul performed in this case, namely the preparation and filing of the brief and the argument of the case?

Mr. CONSAUL: I object because there is no foundation for it in the record as attorney's fees in these cases are not measured in cash, but upon a contingent basis.

A. I could not say because never in my practice, have I known the fee to be charged to be regulated in that way, as these cases
376 are all taken on a contingent basis, I do not believe I would accept a case of this character except on a contingent basis.

Q. Then as I understand it, it is your opinion that the reasonable value of the services performed by Mr. Consaul and Miss Moyers would be two-thirds of the fee whether the fee amounted to $50 or whether it amounted to $5,000. A. I do, the amount does not cut any figure in my judgment.

Q. In determining the reasonable value of the services? A. No, because they are taken on a contingent basis and the amount does not figure in the matter.

Q. You have then no knowledge as a practitioner or otherwise before the Court of Claims that would enable you to express an opinion as to what would be the reasonable value in money of the services performed by Moyers and Consaul in this case, namely the prepara-

tion and filing of this brief and the argument of the case before the Court of Claims, is that right.

Mr. DONALDSON: That is objectionable because it undertakes to confine the witness's testimony that the reasonable value of the services is two-thirds of the fee to be collected with the testimony of the witness that he could not state what would be the proper charge for preparing a brief like the only filed in this case.

A. It would be difficult to fix a money value outside of the custom which prevails to charge a certain commission in these cases, and as to fixing a cash value for any particular part of the service I do not think I could possibly do that, it has never been done in my office.

377 Q. Do you know of the existence of any custom that would give the attorney who prepared the brief in the case and argued the case two-thirds of the fee?

Mr. DONALDSON: Objectionable because under the reference of this case to the Auditor, leave was given to show the reasonable value of the service, not any custom.

A. The custom so far as it comes within my knowledge which is largely within my own office and as to which I think is about fair, gives the local attorney or other attorney one-third of the fee, of course it is not a cast iron rule, there are not two cases alike and there are no two people in the world exactly alike and it is difficult to confine yourself to narrow limits.

Q. What do you mean by local attorney? A. The local attorney is the attorney out in the field in the locality where the claimant lives.

Q. Do you know of any custom that prevails among the practitioners of the Court of Claims whereby the attorney of record in a case pays to some other attorney who prepares the brief and argued the case in the Court of Claims two-thirds of the fee?

Mr. CONSAUL: I object, it is a hypothetical question and there is nothing in the record to base such a hypothetical question on.

Q. I do not know of any such custom, I never had a case of that kind.

Q. In quantity, extent and quality how did the work of the attorney for the claimant in this Caldwell case, performed prior to the death of Colonel Moyers compare with the work performed after his death?

378 Mr. CONSAUL: I object because the value of professional services are not based upon quantity.

A. It conforms to the generality of such cases where the local attorney as we call him, the attorney living out in the claimant's locality takes the evidence and the attorney here prepares the case, tried it and secured an appropriation from Congress.

Q. Is that the best answer you can make to that question? A. I don't think I can make it any more specific.

Adjourned to Tuesday, December 12, 1905, at 1:30 P. M.

CUMMINGS
vs.
CONSAUL.

THURSDAY, *December* 21, 1905—10:30 o'clock a. m.

Hearing pursuant to adjournment.
Present: Messrs. Tucker, Consaul and Donaldson.

Mr. GEORGE W. Z. BLACK, is recalled for further cross-examination.

By Mr. TUCKER:

Q. The claim of J. D. Edge, administrator of Jane Edge Congressional 6847 you testified in your opinion Mr. Consaul and Miss Moyers are entitled to one half of the fee for the services performed after Colonel Moyers' death, it appears in that case that the finding by the Court of Claims was made prior to Colonel Moyers' death, upon what do you base your opinion that Mr. Consaul and Miss Moyers are entitled to one-half of the fee?

Mr. CONSAUL: I object to that portion of the question con-
379 taining the statement of the date of Colonel Moyers' death, it appearing from the record that prior to the death of Gilbert Moyers the firm of Moyers and Consaul or one of them had already been substituted as attorney before the Court of Claims.

A. I think the finding had only been upon the question of loyalty prior to the appearance of Moyers and Consaul, so that the trial on the merits was still open and the services rendered by this firm on this point I consider particularly valuable inasmuch as they procured evidence in corroboration of this claim from the Confederate Archives.

Q. Was the procuring *the* such evidence from the Confederate Archives all of the valuable services that Moyers and Consaul performed? A. Not by any means.

Q. What other services did they perform as shown by the files of the Court of Claims? A. Well they briefed the case and tried it in Court.

Q. What was necessary for them to do to procure this information from the Confederate Archives? A. Well it was necessary to make a search of the Confederate Archives, go through the mass of books there.

Q. What counsel submitted the information on loyalty in that case, Colonel Moyers or Moyers and Consaul? A. Gilbert Moyers.

Q. Who procured the findings on loyalty? A. Gilbert Moyers.

Q. And it was after this finding on loyalty that this evidence was obtained from the Confederate Archives? A. It was.

380 Q. What was the object of that evidence? A. It was to substantiate the claim on the merits.

Q. How is the information obtained in these cases, from the Confederate Archives, that is what is the proceeding taken? A. Consists of a search on the part of the attorney for the claimant, of

course the Government does not furnish any information to corroborate claims.

Q. Will you take these papers in the Edge claim and point out any papers containing evidence obtained from the Confederate Archives. A. The evidence is contained in the claimant's brief on merits.

Q. Produce that brief, please? A. It appears on page 33 and 34 of the brief filed by Moyers and Consaul September 8, 1902.

Q. Will you look at those papers and ascertain who was the attorneys of record at that date? A. I would say that Moyers and Consaul must have been because they could not otherwise have filed the brief.

Q. Was Gilbert Moyers attorney of record at that time? A. The motion to substitute Moyers and Consaul was made September 4, 1902 and allowed September 5, 1902.

Q. So the information obtained from the so-called Confederate Archives consisted of an examination of the Rebellion Records as indicated on pages 33 and 34 of the brief is that what you refer to? A. It is.

381 Q. Did Moyers and Consaul take any testimony whatever in that case? A. Not as appears from the record.

It is conceded by counsel for the defendants that The Edge case was prepared and presented to the Court of Claims on the issues of merits upon the evidence which had been taken before the Southern Claims Commission and the information secured from the Rebellion Records by the substituted Attorneys.

It is also agreed that when the Edge case was pending before the Court of Claims on the issue of loyalty and at the time the case was represented by Gilbert Moyers, two depositions on loyalty were procured and filed at the instance of the claimant.

Q. In the matter of the claim of Sally J. Adams, administratrix of Herbert Smith, Congressional Number 4499, upon what do you base your opinion that Moyers and Consaul are fairly entitled to one-half of the fee? A. Upon the same ground that I did in the case of Edge.

Q. What services were performed by Moyers and Consaul in that case apart from Gilbert Moyers? A. They procured the evidence from the Rebellion Records and they briefed and tried the case.

Q. On merits or loyalty? A. On merits, and they recured an unusually large allowance for such a case.

Q. Were any depositions of witnesses taken by them? A. There were not.

Q. What are those rebellion records, do they consist of volumes of records, published by the Government? A. They do,

382 embracing about 150 volumes.

Q. They contain what? A. They purport to be the official record of the War of the Rebellion on behalf of both the National and the Confederate Armies.

Q. Made up of? A. Orders, dispatches, everything official.

Q. The object in examining these records in connection with this Edge claim and the Smith claim was to ascertain whether any of

the orders, dispatches and other records contained any information that would throw any light on the merits of the claim? A. That is it.

Q. You have heretofore stated with reference to the Caldwell claim your opinion as to the value of the services of Moyers and Consaul was based partly on the fact that they secured an appropriation from Congress to pay the findings, is that true also of the Smith and Edge claims? A. Of course the preparation of all claims of that class involves a great deal of labor and good deal of time.

Q. Aside from any labor performed by Moyers and Consaul in procuring an appropriation from Congress to pay the findings of these cases, what would you say would be a reasonable charge for the services? A. I think in all these cases 33⅓% would be a reasonable charge.

Q. No matter what the attorney does? A. I would say that when I spoke of that I meant, embracing the whole fee, of course
383 there is more labor in some cases naturally than in others, some have a great deal of work and some not so much.

Q. You mean generally speaking where an attorney prosecutes one of these claims to a conclusion and secures an appropriation he is entitled to one-third of the amount? A. He certainly ought to have at least that much.

Q. What I want to get at is this, speaking now of the value of the services performed by Moyers and Consaul in connection with these three claims, what would you say would be the value of such services performed in the Court of Claims, that is apart from any work on their part in securing an appropriation by Congress to pay the findings of the Court of Claims. A. Twenty-five per cent.

Q. That is 25 per cent. of the amount recovered. A. Yes.

By Mr. CONSAUL:

Q. Take the general run of Bowman Act cases, about what proportion of the amount originally claimed is usually allowed by the Court of Claims? A. Well I can only testify in so far as my own cases are concerned, I should say on an average about 33⅓ per cent.

Q. What would you say as to the character of a finding in the sum of $817 made in a case in which the total amount claimed before the Southern Claims Commission was $1150. A. Well I should say that was a very good finding, in excess of the average in such cases.

Q. What would you say as to the finding in the sum of $1826 in a Bowman Act case where the amount claimed before the
384 Southern Claims Commission was $2845? A. Well I should say that was a very good finding, better than the average.

Q. Please state if you can from your own experience whether any considerable weight is given by the Court of Claims to evidence from the Rebellion Records?

Mr. TUCKER: I object as clearly immaterial and improper.

A. The Court gives a great deal of weight to what they call official evidence of this kind.

Q. Referring to the Caldwell case relative to which you have previously testified, are you able to state whether or not at the time of the death of Gilbert Moyers all the testimony on behalf of the claimant's loyalty had been briefed and placed before the Court by Gilbert Moyers. A. I am able to state that the evidence on one important part had not been presented, that is in regard to the report from the Confederate Archives involving the alleged sale of supplies to the Confederates.

Q. Assuming that the entire attorney fee in the Caldwell case was 50 per cent. of collection what would you say would be a reasonable portion of such fee to be paid to the firm of Moyers and Consaul if associated with R. W. Haynes for services performed by them.

Mr. TUCKER: I object on the ground that the subject matter of the question is improper re-direct examination, having been covered in the direct examination and on the further ground that the witness has in no wise qualified himself to express an opinion upon the subject and upon the further ground that the order of reference in this case related to the reasonable value of the services of
385 Moyers and Consaul and does not justify the taking of testimony of this character based upon an appropriation of fees rather than the value in cash of the services performed.

A. Moyers and Consaul should receive at least 25 per cent. of the amount recovered. It was a case disclosed by the record of hazardous character, in my judgment fatal, and the skill displayed by Moyers and Consaul has never been surpassed in this line of practice. I do not believe that only case in a thousand like that could have been won, I could never have won it and I have tried some pretty hard cases.

By Mr. TUCKER:

Q. Is your answer to the last preceding question based upon the files in the Court of Claims? A. The files in this case.

Mr. WILLIAM W. SCOTT, having been sworn testified as follows:

By Mr. CONSAUL:

Q. What is your residence and occupation? A. 914 Westminister Street, City of Washington, Assistant Attorney in the office of the Attorney General.

Q. What are your duties as Assistant Attorney in the Department of Justice? A. The preparation of the defence and defending suit against the Government, principally pending in the Court of Claims, some in the Supreme Court and in the District Circuit Courts.

Q. Did your duties before the Court of Claims bring you into contact with what are commonly known as Civil War Claims? A. Yes.

386 Q. How long have you been engaged in defending for the Government War Claims in the Court of Claims? A. Ever since my appointment July 1897.

Q. Please state as nearly as you can about how many Civil War

claims you have defended on behalf of the Government before the Court of Claims, approximately? A. That is a hard question to answer definitely, my report of cases ready for trial in October showed that I had on my docket 106 Congressional cases, fifty some of which I have ready for trial, I would approximate that I try anywheres from fifty to one hundred cases, Congressional cases per year.

Q. Under what Acts of Congress were these war claims you have defended prosecuted? A. Under the Act of March 3, 1883, known as the Bowman act and under the Act of March 3, 1887, known as the Tucker Act.

Q. Please state whether you had any official connection with the war claim of Lucy J. Eaton executrix of Lucy A. Caldwell case number 2028 and 11,146 Congressional before the Court of Claims? A. That case was in the Court under two reference-, the first reference was under the Bowman Act, it was later referred under the Tucker Act. The case had not come to trial under the Bowman Act when it was referred under the Tucker Act. After the reference under the Tucker I was assigned to defend the case and did so until its final trial.

Q. State if you know who represented that claim on behalf of the claimant before the Court of Claims? A. Prior to Gilbert Moyers' death he was the attorney of record, after that time it was prosecuted by Moyers and Consaul.

387 Q. Please state in what condition this case stood at the time of Colonel Moyers' death? A. The case had not been tried on loyalty under the Bowman Act. I will explain that under the Bowman Act reference two trials are had in each case, one on loyalty and one on merits. The evidence had been taken and two or three briefs partly covering the case had been filed by the counsel for the claimant and I think Mr. Kincheloe, Assistant Attorney had filed a brief on loyalty under the Bowman Act, then when it came down under the Tucker Act Moyers and Consaul appeared as attorneys of record and the two cases were consolidated.

Q. Please state whether or not at the time of Gilbert Moyers' death this case was in proper shape by reason of the briefing for trial on both loyalty and merits? A. It had not been briefed in accordance with the rules of the Court. Colonel Moyers had filed as I remember two or three briefs partially covering the case.

Q. Please state what was done before the Court of Claims on behalf of the claimant after Colonel Moyers' death? A. My recollection is that Moyers and Consaul moved to withdraw the various briefs filed by Colonel Moyers and the partial abstract of the evidence and filed in lieu thereof, a complete abstract of all the evidence and briefed the case, Mr. Consaul of Moyers and Consaul made the argument in Court, myself representing the Government.

Q. Do you mean that the case was argued orally before the Court of Claims by yourself and Mr. Consaul? A. Yes.

388 Q. Please state if you can whether the brief on loyalty filed by Moyers and Consaul contained any material facts or arguments in behalf of the claimant's loyalty not contained in

any brief filed by Colonel Moyers. A. My recollection is that it did. I am certain that the brief filed by Moyers and Consaul better covered the case. It was a complete abstract of all the evidence while the brief filed by Colonel Moyers was not. Neither had Colonel Moyers as I remember, made any extensive or material argument as to the facts on the question of loyalty while Moyers and Consaul did.

Q. From your experience in cases of this kind, extending over a period of eight years or so, what would you say were the chances of winning for the claimant a case in which the facts were as disclosed by the record in this Caldwell case?

Mr. TUCKER: I object as calling for a purely speculative answer, irrelevant and immaterial.

A. Very poor. The records from the Departmental Reports in the Caldwell case were very damaging on the question of loyalty.

Q. Have you argued any other cases before the Court of Claims against Mr. Consaul of the firm of Moyers and Consaul? A. Yes, against both members of the firm.

Q. Please state from your experience whether or not that firm are qualified and were qualified at the date of the preparation and argument of the Caldwell case to properly present the case on behalf of the claimant? A. Considering the way they handled that case I would say they were.

389 Q. From your personal knowledge of the Caldwell case and its prosecution please state to whom is due the credit for securing the favorable findings therein.

Mr. TUCKER: I object on the ground that it calls for immaterial testimony and on the further ground that the files and records of the Court of Claims show that it was due largely to the members of the Court itself that the case was decided favorably to the claimants.

A. Moyers and Consaul.

Q. Please state whether or not any advantage accrued to the claimant in the Caldwell case from the reference of the case to the Court of Claims under the Tucker Act? A. Yes.

Q. Please state in what manner? A. It expedited the prosecution of the case and the final hearing, it was this that enabled the claimant's attorney to bring the cases to a final trial in one hearing, while under the Bowman Act you would have had to have two.

Q. Please state whether you have come voluntarily as a witness for the defendants in this case? A. I have not. I might say I declined to come when requested and would not until they sent for me.

Q. State whether or not you are here pursuant to a subpœna issued by the Supreme Court of the District of Columbia? A. I am.

Q. From your personal knowledge of the Caldwell case and its prosecution before the Court of Claims what proportion of any total attorneys' fees collected in said case would you say had been

390 earned by the firm of Moyers and Consaul?

Mr. TUCKER: I object on the ground that the witness has not

stated any fact whatever qualifying himself as an expert on the subject of attorneys' fees in the Court of Claims' cases and upon the further ground that upon the order of reference in this case the inquiry as to the proportion of a fee properly payable instead of the cash value of the services is improper.

A. I would say considering the record in the Caldwell case that they earned at least two-thirds if not three-fourths of any fee collected.

Q. Please examine the papers in the case of Sally J. Adams administratrix of Herbert Smith *vs.* the United States No. 4499 Congressional, and state with what degree of care that case was prepared for presentation to the Court of Claims on the issue of merits. A. I believe that the best answer that I could give to that question would be to say that if the testimony and case handed me was handled with the usual care of that firm it was well handled. It would take me some time to go through the papers and examine them thoroughly. A. Please examine the concluding portion of the claimant's brief on merits entitled "general remarks" and state what degree of preparation or care in preparation is indicated thereby? A. This portion of the brief under the general remarks compares favorably with briefs prepared by that firm of Moyers and Consaul in other cases I have tried and shows that they had examined the records
391 of the Confederate and Union Armies during the war of the Rebellion, which I might say is not infrequently neglected by some other attorneys.

Q. I now hand you the files in the case of J. D. Edge administrator of Jane E. Edge No. 6847 Congressional and ask you to make a similar statement relative to the presentation of this case on the issue of merits? A. Of course I did not handle this case for the Government. This case is similar to the last case I had, the Adams case, showing that the Rebellion records had been examined and their contents set out and cited in the claimant's brief on merits. It required about the same amount of labor as the Adams case.

Q. Assuming that in the case of J. D. Edge Administrator of Jane E. Edge and Sally J. Adams Administratrix of Herbert Smith the firm of Moyers and Consaul or either of them took charge of the case after loyalty had been found, there being no testimony on merits taken, except that before the Southern Claims Commissions, what would you say would be the reasonable and fair proportion of any total fee collected as being earned by Moyers and Consaul or either of them?

Mr. TUCKER: I object on the ground that the witness has not qualified himself as an expert on the subject of fee and on the further ground that under the order of reference in this case the inquiry as to what proportion of fees should be paid Moyers and Consaul instead the cash value of the services rendered is improper.

A. If that does not include the collection of the claim in Congress, I would say fifty per cent., if it included following the claim
392 to Congress until its final collection through the Omnibus Bill, I would say from one half to two-thirds of the fee collected.

By Mr. TUCKER:

Q. Were you acquainted with the late Gilbert Moyers before his death?

Mr. CONSAUL: I object as immaterial.

A. About a year, I met Gilbert Moyers professionally in the fall of 1897, I did not meet him personally that is to form a personal acquaintance with him until a year or so after that.

Q. Was he active in the prosecution as attorney of claims in the Court of Claims up to the time of his death?

Mr. CONSAUL: I object as immaterial.

A. In some cases he was active, in some cases, he was not active.

Q. Take the case of the Caldwell claim how active was he in the prosecution of that claim up to the time of his death?

Mr. CONSAUL: I object.

A. I would think that he was active in the taking of evidence or seeing that evidence was taken, at least it appears so from the evidence in the case.

Q. When he died what remained to be done in that case in order to prepare it for final submission to the Court of Claims? A. In the Caldwell case the work done at what we would call the Washington end, by Gilbert Moyers was absolutely lost for the reason that his abstracts of the evidence and his briefs were incomplete, and if I remember right I called Moyers' and Consaul's attention to the fact that they would have to withdraw those briefs or I would have
393 to make a motion required them to file new ones in accordance with the rules of court.

Q. You called that to their attention when, before or after Gilbert Moyers' death? A. Well it must have been about or shortly after Moyers' death.

Q. Now, I understand up to the time of his death Moyers had caused all the testimony that was taken in the case, to be taken and had filed briefs in behalf of the claimants and that after his death you called Mr. Consaul's attention to the fact that the brief filed did not conform to the rules of the Court, thereupon Mr. Consaul filed a brief on which the case was finally heard, is that right? A. I think so.

Q. Now, how did Mr. Consaul's brief differ from the brief filed by Colonel Moyers other than by including in one brief the summary of the evidence and arguing it thereon? A. The briefs prepared and filed by Colonel Moyers in Congressional cases were given to clerks in his office to do the work. His abstract of the testimony especially on the merits of the case was not paragraphed, the Colonel was not the best scribe and he would make side notes on the margins, a comparison of a brief prepared by Colonel Moyers and one prepared by Moyers and Consaul would answer your question better than I could.

Q. As I understand it Mr. Consaul's brief in this case was based entirely upon the record in the case as it then stood and upon the

briefs that Colonel Moyers had prepared, is that correct? A.
394 Upon the record of the case.

Q. Have you compared Mr. Consaul's abstract of evidence in his brief with the abstract of the evidence in Colonel Moyers' brief?

A. No, but I compared the abstract of the evidence in the Moyers brief with the record and found it wanting, and I have compared the abstract of the evidence in the Moyers and Consaul brief and found that they had presented the evidence that had been omitted from the Moyers brief.

Q. Have you compared the abstract of evidence of each of the witness- in the Consaul brief with the abstract of the evidence of the same witnesses in Colonel Moyers' brief? A. I did not compare the two briefs, I first compared Moyers' brief with the evidence in the case and the Moyers and Consaul brief with the evidence in the case, it was not necessary to compare the two briefs.

Q. Was not the chief work done by Consaul in the preparation of his brief the making of a careful and accurate abstract of the testimony that had been taken, if any what other work was necessary to be performed by him in the preparation of that brief. A. His principal duty was to correctly abstract the evidence, summarize it for the Court and to see that none was omitted, go through his records in the case and of course the Government Report to see that all was included in his brief then of course the case came up for trial and argument.

Q. These cases differ in no material way do they from an ordinary equity case that is heard on the pleadings and testimony
395 taken, except of course the minor particular involving examination of Government Records? A. They do not differ materially from equity cases.

Q. In this Caldwell case do you know whether Moyers and Consaul assisted Colonel Moyers prior to his death? A. I do not.

Q. Have you any experience that would enable you to express an opinion upon the value in money of the services of a competent person to take the record in this Caldwell case in such condition as it was at Colonel Moyers' death and make an accurate and fair abstract of the testimony such as is required by the rules of the Court of Claims and such as you say was done by Mr. Consaul in the brief filed by him?

Mr. DONALDSON: I object because the defendants have leave in this case to interpose testimony touching the value of the professional services rendered by them as an attorney in this case.

A. I don't think I have.

Q. When you say that in your opinion for such services as Mr. Consaul and Miss Moyers performed after Colonel Moyers' death in your opinion would be entitled to from two-third- to three-fourths of the fee, upon what do you base such an opinion? A. I made that statement for the reason that that case as it stood before Moyers and Consaul took hold of it was what I would consider a lost case to the claimant.

Q. Why? A. For the reason that the record in the Caldwell

case on the question of loyalty was very bad, I never lost a stronger case for the Government than that Caldwell case. The work
396 done by Moyers had been, you might say jumbled together, he would file one brief, then he would file another, then he would take some more evidence and file another additional brief, it was in very bad shape, and had I undertaken as claimants' attorney to unravel that case after Moyers' death, I would not have done it for less than that share of the fee.

Q. It makes no difference what the amount of the fee was in that case, whether one thousand dollars or one hundred thousand in your opinion, any competent person who made such an examination of the record and prepared such an abstract of the evidence and briefed as was prepared and filed by Moyers and Consaul and who thereafter argued the case in the Court of Claims would be entitled to from two-thirds to three-fourths of the fee, notwithstanding that all of the work other than the preparation of the brief in question was done prior to Colonel Moyers' death? A. I think you have stated it right, the success of the prosecution of the claim against the Government almost wholly relies on its final trial here in Washington, especially is that true in cases like this Caldwell case.

Q. Did the Court of Claims in its opinion in that case show why they decided it in this remarkable way. A. No.

Mr. CONSAUL: I object as stating that the decision of the Court was remarkable, that not having appeared in the record.

Q. Did you attribute the findings of the Court of Claims for the claimant in that case to the extraordinary way in which the testimony was abstracted by Mr. Consaul in his brief? A. Not
397 wholly.

Q. To what did you attribute that decision, not to your own deficiency in that respect? A. Mr. Consaul, or whoever prepared the last brief for Moyers and Consaul disclosed the fact that there was another Lou Caldwell down in the vicinity where this claimant resides and in the argument Mr. Consaul laid great stress upon that fact which to my mind lead the Court to believe that it was her, or rather there was some doubt as to whether or not this claimant was the purchaser of the Confederate Bonds which was as I argued detrimental to the loyalty of the claimant, that fact had not theretofore been set out, I think that is why I lost the case.

Q. When you say that Consaul disclosed this fact, you don't mean he went outside of the record in the case? A. No, it was in the record but it had not been abstracted or brought out.

Q. This of course is merely a surmise on your part as no opinion was rendered? A. It is the only way that I can account for the decision of the Court, I might say that the Court very seldom gives opinions in Congressional cases, they simply give a finding of fact.

Q. Was that point suggested in the brief filed by Consaul? A. My recollection is that it was, I could not tell unless I would go over it.

Q. Was it suggested in the brief filed by Moyers? A. No, if I

remember right that cropped out on the cross-examination of one of the Government witnesses.

Recess until 1:30 p. m.

398 THURSDAY, *December 21st*, 1905—1:30 o'clock *a.* m.

Met, pursuant to adjournment.

Present: Mr. Tucker on behalf of complainant and Mr. Donaldson on behalf of defendants.

Whereupon CHARLES F. CONSAUL being first duly sworn, testified as follows:

My full name is Charles F. Consaul; my residence is Washington, D. C., my occupation is that of attorney at law and I am one of the defendants in this case.

Referring to the case of Lucy J. Eaton, Executrix of Lucy A. Caldwell, being Case Nos. 2028 and 11,146, Congressional, before the Court of Claims and involved in this reference, I have to state that prior to the death of Colonel Gilbert Moyers, which occurred June 13th, 1903, neither Miss Ida M. Moyers, co-defendant in this cause, nor I had had any personal connection with the prosecution of this claim. Individually I simply knew that there was such a case in the office, and may have heard some conversation between Colonel Moyers and Mr. Ralph W. Haynes of this city concerning it, but knew nothing of it personally. After the death of Colonel Moyers, the firm of Moyers and Cansaul consisting of Ida M. Moyers and myself took up with Colonel Haynes the matter of securing authorization from Mrs. Eaton, the executrix of Mrs. Caldwell, for prosecuting this claim. Prior to that time the firm of Moyers and Consaul never had any connection or intercourse of any sort with the claimant, Mrs. Eaton. We did not know her and she did
399 not know us, and, so far as I am advised, she had never heard of the firm of Moyers and Consaul, or either member of that firm. The matter of securing this desired authorization from Mrs. Eaton was left entirely with Mr. Haynes. Prior to the death of Colonel Moyers, Mr. Haynes had in some manner come into control of this claim.

Mr. TUCKER: The latter statement is objected to as hearsay evidence.

The WITNESS (continuing): The records show that prior to the death of Colonel Moyers, he had requested that Mr. Haynes be entered as of counsel in that case before the Court of Claims.

Mr. TUCKER: Objected to for the reason that the record is the best evidence.

The WITNESS (continuing): This being shown by the court files now before us. The power of attorney secured through Mr. Haynes, and, either brought or sent by him to the firm of Moyers and Consaul, is the power of attorney filed before the Court of Claims, according to the file mark of July 3rd, 1903, and purporting to have

been executed by Mrs. L. J. Eaton June 29th, 1903, appointing Moyers and Consaul and R. W. Haynes her attorneys to prosecute this particular claim. The endorsement upon this power of attorney of the words "and R. W. Haynes" was not made by us or in our office.

Stipulation.—It is here stipulated by the parties that in view of this witness' giving his testimony in narrative form and no opportunity being afforded counsel for complainant to object to any testimony until after such testimony has been actually given,
400 that counsel for the complainant shall be at liberty if he sees fit before the conclusion of the witness's testimony to specify his objections to any portion of such testimony, and that such objection shall have the same effect as if made to the question, if the deposition was by question and answer.

The WITNESS (continuing): At no time prior to the substitution of the firm of Moyers and Consaul before the Court of Claims did my firm have any communication with or from Mr. Eaton. On July 3, 1903, the firm of Moyers and Consaul, as attorneys with R. W. Haynes of counsel, filed before the Court of Claims a motion to substitute attorneys, suggesting the death of Gilbert Moyers, the former attorney of record, R. W. Haynes, being placed upon the motion itself as of counsel. This motion was allowed by the court a short time thereafter, although the date of the allowance of the motion is not endorsed upon the motion. On July 6th, 1903, my firm, with Mr. Haynes, of counsel, filed letters testamentary showing Lucy J. Eaton to be sole surviving executrix of the will of Lucy A. Caldwell, together with a motion that the executrix be substituted as formal party claimant. This motion was also allowed. After this was done I took personal charge of this case and examined the Court of Claims records and files very carefully with the view to preparing for an oral argument. In so doing I discovered that the claim was at that time in no proper shape for presentation to the court. At least two briefs had been filed on behalf of the claimant by Colonel Moyers on the issue of loyalty. One was filed on March 1st,
401 1895, a supplemental brief on this issue was filed September 9th, 1901, and a reply to defendant's brief on loyalty was filed May 23rd 1903. An examination of these briefs with the accompanying abstracts show that the abstract in some cases and as covering the testimony of some witnesses was an attenuated affair, being too short to do justice to the testimony. And I also discovered that while the supplemental brief filed September 9th, 1901, purported to embrace the disposition of the witness Rufus G. Caldwell, it covered but a very small portion of that deposition, and omitted that portion of said deposition which was most favorable to the claimant on the issue of loyalty. At the time I made this examination of this brief I made a pencil note upon the brief which I find still there in the words "Remainder of Depo. should be added to this abst." that is, that the remainder of this deposition should be added to this abstract. The Court of Claims has the rule that where testimony has been taken at various times on one issue and several

abstracts or briefs have been filed before the case is brought to trial, all the testimony shall be embraced in one abstract. Without formally filing a motion to withdraw the briefs on loyalty, filed by Colonel Moyers, I reabstracted all of the testimony adduced in the case on behalf of the claimant on the issue of loyalty, and my firm filed this substitute brief on loyalty on July 25th, 1903. This was done after conference with Mr. Haynes who requested me to personally prepare this abstract and brief. At the time of Colonel Moyers' death he had already filed an abstract and brief on the issue
402 on merits of the taking of property. On November 6th, 1903, W. W. Scott, assistant attorney in the Department of Justice, on behalf of the Government, filed an abstract of testimony adduced by the Government in opposition to the claim, and also filed his brief on loyalty and merits. The case was brought to hearing upon oral argument before the Court of Claims March 1st, 1904. I made the oral argument on behalf of the claimant, and Mr. Scott argued the case on behalf of the Government. In our substitute brief on loyalty before mentioned and upon the oral argument of the case, I made a number of points in favor of claimant's loyalty which were not made or set forth in the briefs filed by Colonel Moyers.

In this case, according to reports from the Government Departments and also according to depositions taken on behalf of the Government, it will appear that Lucy A. Caldwell, the claimant's decedent, had been guilty of a number of disloyal acts. Among these was the purchase of Confederate bonds. This act is held by the Court of Claims to be conclusive of disloyalty unless done under the Act of February 17th, 1864, of the Confederate Congress, which did not appear to be the case here. It also appeared from the defendant's testimony that Mrs. Caldwell had voluntarily sold a boat load of corn to the Confederate Government, which would constitute the giving of aid to the rebellion and be an act of disloyalty. It also appeared on the face of the record that Mrs. Caldwell had furnished the labor of slaves to work for the Confederate Government, and had collected therefor.

403 After I had prepared our substitute brief on loyalty and in the preparation for oral argument, I discovered that one of the witnesses for the Government had testified or admitted that there was a Lou Caldwell living at Little Rock, Arkansas, during the war, other than the Lucy A. Caldwell, deceased, claimant. In oral argument I maintained that this was sufficient in the absence of any showing to the contrary to cast upon the Government the burden of proving definitely that the person involved in the bond transaction with the Confederacy was in fact the claimant's decedent. I was also able, both in brief and in oral argument, to show inconsistencies in the testimony of the Government's witnesses to such an extent as to render some of their testimony of no weight as relates to the bond transaction. I also called the attention of the court to the fact that under the law under which said subscription was apparently made, a funding of Confederate treasury notes should not be held to be a disloyal act. I suppose that the oral argument of this case took me perhaps an hour, or something over. After the

case was thus argued orally and submitted, on March 14th, 1904, findings in favor of decedent's loyalty and in favor of claimant in the sum of $4,250. were filed by the court. On March 24th, 1904, my firm filed a motion to transmit these findings to the United States Senate, and secured the assent thereto of Mr. Scott, the Government counsel, of the docket clerk in that office, and of the assistant attorney general, L. A. Pradt. The findings were forthwith certified, and the claim was embraced in the Omnibus Claims Bill on February 24th, 1905, carrying an appropriation for its payment.

404 It was the custom of Gilbert Moyers to keep dockets showing actions taken in cases in his hands. These dockets have already been referred to and produced in this cause, and I now produce and offer in evidence Docket D, containing the history by entries of the Caldwell case.

Stipulation:

It is stipulated that a copy of the docket entries referred to, which copy is here produced by the witness, shall be filed and considered in evidence in lieu of the original docket entries.

The WITNESS (continuing): I now hand the Auditor a true copy of the docket entries in this case, to be filed as an exhibit with my deposition, which is marked Exhibit No. —.

One of the entries upon this docket is a note of acceptance of the proposition of White and Altheimer, attorneys at law, Little Rock, to accept one-third of the contingent fee. After the allowance by the Court of Claims of this Caldwell claim we prepared and transmitted to Mr. Haynes a power of attorney for execution by claimant, authorizing us to receive in settlement the warrant which might be issued in payment of the claim. This power of attorney was executed and returned to us through Mr. Haynes, but cannot be produced now because it is on file in the Treasury Department.

After collection had been actually made, a total fee of fifty per cent. of the collection, or $2,125., was collected from the claimant, less the sum of $150. rebate allowed to her on account of expenses

405 which she had incurred and which would properly be chargeable to counsel where a fifty per cent fee was paid. By consent of Mr. Haynes we also paid the firm of White and Altheimer, attorneys at law, of Pine Bluff, Arkansas, for their services as local attorneys, the sum of $175., leaving the sum of $1,800 to be divided between R. W. Haynes and our firm. This sum was divided by agreement, Mr. Haynes taking $750. and our firm the sum of $1,050. At no time until after the successful prosecution of this claim had the firm of Moyers and Consaul any communication with Lucy J. Eaton, the party claimant. The preparation of this case for argument was commenced when the case seemed to be almost hopeless. It required patient effort and examination of the papers and more than ordinary care in presentation.

The reasonable value of the services rendered in this case after the death of Gilbert Moyers is most assuredly not less than three-fourths of the total attorneys' fees. Examination of the Court of Claims, files now before me shows that this claim was originally

presented to the Southern Claims Commission by Pruett and Francis, attorneys for claimant.

(Counsel for defendants here ask attention to the testimony of Gilbert Moyers to be found on page 134 of the printed record in this case, showing that the firm of Pruett and Francis transferred their business to Gilbert Moyers in 1877.)

There is nothing in the files of the Court of Claims to show through whose efforts this case was originally referred to the Court of Claims. It was so referred by the committee on War
406 Claims of the House of Representatives under the terms of the Bowman act on February 28th, 1887. On January 24th, 1887, appearance for claimant was filed by Gilbert Moyers. There are no papers among the court files to indicate the connection of George B. Edmonds with this claim prior to the filing of five papers by him in September, 1887. On September 8th, 1887, George B. Edmonds filed a power of attorney, a request to extend the time for filing petition, a paper indicating L. J. Eaton to be executrix and a petition addressed to the Court of Claims on September 12th, 1887. There was filed by Mr. Edmonds a notice that certain evidence would be used by petitioner. The petition filed by Mr. Edmonds in September 1887 was not the petition on which the case was finally tried before the court.

(Counsel for defendants here ask attention to the fact that appearance was entered before the Court of Claims in the Caldwell case by Gilbert Moyers on June 24th, 1887, which was the year before any agreement is alleged to have been entered into between him and George B. Edmonds.)

Mr. TUCKER: Counsel for the complainant calls attention to the fact that no power of attorney to Mr. Moyers appears in the files of the Court of Claims, while Mr. Edmonds filed a power of attorney for the claimant (April 19th, 1886) prior to the date of their partnership agreement, and there is no evidence that prior to the latter date Moyers had any fee contract with the claimant, while it appears from the evidence that Edmonds did. The date of the partnership agreement between Edmonds and Moyers was February 6th, 1888. As shown by Moyers' own testimony (Printed record
407 Pages 241-2) he admitted the Caldwell case to be a partnership case and claimed to be entitled to reimbursement for expenses incurred in it, which admission was also made by his including this case in his list of Edmonds cases filed by him.

Mr. DONALDSON: Any admission made by Gilbert Moyers would not be binding on these defendants. They are asserting their right here in their individual capacity and not as administrators of his estate. Counsel for defendants object to the latter portion of this statement because the so-called list of Edmonds cases is not on file in the case and is not to be found.

The WITNESS (continuing): The firm of Moyers and Consaul made no effort whatever to secure employment as attorneys for claimant in this case, either as associates of Ralph W. Haynes or otherwise on account of the members of such firm happening to be administrators of the estate of Gilbert Moyers. So far as I am advised,

neither the claimant, Lucy J. Eaton, nor Mr. Haynes, knew at the time of the employment of my firm that the members of the firm happened to be such administrators.

Mr. TUCKER: So far as this statement purports to give the knowledge of anyone but the witness himself, it is objected to as hearsay.

The WITNESS (continuing): I know that I never advised the claimant that Ida M. Moyers and C. F. Consaul were administrators of Gilbert Moyers' estate. Because of the fact that I did not
408 personally participate in handling this claim prior to the death of Gilbert Moyers, I cannot say of my personal knowledge who secured the Tucker Act reference of this claim to the Court of Claims. This reference was of decided benefit to the claimant. Under the Bowman Act, under which this claim was first referred to the Court of Claims, two trials are necessary, the case being first tried on the issue of loyalty and, in the event of a favorable finding being made, it then becomes the duty of claimant to prove the case on merits, and the Government replies thereto, and it is tried on the issue of merits. If this case had been tried under the Bowman Act reference when it was tried in March 1904, the finding would have been only on the issue of loyalty, and it would have been necessary for claimant thereafter to brief the case on the merits. The case would then have awaited preparation by the defense, which usually means on an average a delay of not less than from six months to a year or more before the case could have been tried on the merits. If this delay had occurred in this case, the claim would not have been paid yet because cases or claims were omitted from the Omnibus Claims bill, approved February 24th, 1905, which had not been certified by the Court to Congress during 1904.

Relative to the case of J. D. Edge, administrator of the estate of Jane Edge, No. 6847, Congressional, before the Court of Claims, this claim was prosecuted by Gilbert Moyers as attorney of record for claimant up until and including the filing by the Court of Claims of a finding in favor of loyalty of claimant's decedent. Thereafter Ida
M. Moyers and I secured from the administrator of Jane
409 Edge a power of attorney revoking all previous powers of attorneys which was filed in the Court of Claims on August 29th, 1902, purporting to have been executed by J. D. Edge, administrator, August 25th, 1902. At the same time a motion to substitute said J. D. Edge as administrator before the Court of Claims was filed, together with a certified copy of letters of administration, bond and oath. And a motion to substitute the firm of Moyers and Consaul, attorneys of record for claimant was filed, which motion was assented to by Gilbert Moyers. By reason of an informality in the motion to substitute attorneys, filed August 29th, 1902, a further motion to the same effect was filed by Moyers and Consaul, a firm consisting of Ida M. Moyers and C. F. Consaul, on September 4th, 1902, which motion was allowed September 5th, 1902. After that time the sole conduct of this case was in the hands of the firm of Moyers and Consaul, which had been in actual existence from January 1st, 1902. On September 8th, 1902, my firm filed a petition on behalf of claimant verified by the administrator himself, and also filed a request for

findings of fact and brief on merits, consisting of the request for findings, an abstract of all evidence in the case relative to the taking of property, an itemized summary of this evidence under the various items of property, and an argument. After the reference of this claim to the Court of Claims no testimony was ever taken on behalf of claimant on the issue of merits, but my firm presented the case upon this issue solely upon evidence which had been taken when the claim was pending before the Southern Claims Commission
410 in the seventies. Aside from abstracting and summarizing the evidence, I personally made an extended and patient search of the Rebellion records, so-called, consisting of over one hundred volumes, published under Government authority. As the result of this examination in connection with the testimony in the case I was able to show by the official records that at the time it was alleged that the property was taken U. S. Troops were operating in the immediate vicinity of the farm of claimant's decedent, and these published records in connection with a topographical map of that portion of Georgia, which I secured at the Geological Survey, enabled me to show that the Federal troops to go from one point where they were shown to be, to another point where they were later shown to be, must have passed through Maddox Gap in which claimant's decedent resided, thus corroborating by the records the testimony of witnesses as to the taking of the property and the circumstances thereof. As presented to the Southern Claims Commission this claim was in the sum of $1,150. Findings were filed in the sum of $817. This finding is considerably larger in proportion to the amount claimed than is usually allowed upon cases of this sort. A reply brief was also filed by my firm on the issue of merits before the case was submitted for decision. The case was submitted to the court for its finding on December 1st, 1902, and findings were filed January 5th, 1903. On January 13th, 1903 my firm moved that the findings be certified to Congress, which was allowed January 13th, 1903. The case was embraced in the Omnibus Claims bill, approved February 24th, 1905, and was paid in the sum of $817. Our fee agreement with J. D. Edge, administrator of Jane Edge, was for——

411 Mr. TUCKER: Objected to unless the fee agreement, if in writing, is here produced.

The WITNESS (continuing):—was for one-third of the total collection. I here produce this fee agreement, and offer the same in evidence, to be marked Exhibit No. —.

It is stipulated between counsel that a copy of the agreement referred to may be made in the record, and the copy shall be used as evidence in lieu of the original.

Mr. TUCKER: I object to the admissibility of this fee agreement as in any way binding upon this complainant or upon the partnership existing between Moyers and Edmonds.

(Which fee agreement is as follows:)

Fee Agreement.

This Memorandum of Agreement, Witnesseth: That I, J. D. Edge, of Lone Oak, Texas, administrator of the estate of Jane Edge, deceased, at one time a resident of Walker County, Georgia, have employed I. M. Moyers and C. F. Consaul, of Washington, D. C., and each of them, as my attorneys to prosecute my claim against the Government of the United States for Stores and Supplies taken from Jane Edge, (now deceased) by United States Troops during the late Civil War, being pending Case No. 6847, in the Court of Claims of the United States, and in consideration of their professional services in the prosecution of said claim, I hereby agree to pay them as a fee a sum equal to thirty-three and one-third per cent. (33⅓) of the amount which may be collected upon said claim, said fee to be a lien on any warrant that may be issued in payment of said claim.

Witness my hand this 25th day of August, 1902, in the
412 County of Hunt, State of Texas.

J. D. EDGE,
Administrator of Estate of Jane Edge, Deceased.

Witnesses to signature:
W. H. GAUDY.
D. M. CROOKS."

The WITNESS (continuing): The fee actually collected by my firm in this case was one-third of $817., which amounts to $272.33.

Miss Moyers and I secured our authority from the only person having any right to give a power of attorney, meaning the administrator of Jane Edge, with the assent of Gilbert Moyers.

This Edge claim was submitted before the Southern Claims Commission on July 24th, 1877, by Taylor and Wood, attorneys for claimant, as shown from the original petition to that commission, now in the files of the Court of Claims in this case.

By Mr. DONALDSON:

Q. What proportion, so far as quantity of work is concerned was done by the firm of Moyers and Consaul, as compared with what was done by Gilbert Moyers prior to his death?

Mr. TUCKER: Objected to for the reason that the files of the Court of Claims are the best evidence upon this subject.

A. About one-half of the work done in this city in the prosecution of this claim before the Court of Claims was done by the
413 firm of Moyers and Consaul. Before the Court of Claims only three depositions were taken, two of these being taken on behalf of the claimant while Gilbert Moyers was attorney of record, and the third deposition was taken on behalf of the Government. In other words, only two witnesses were examined on behalf of claimant while the case was before the Court of Claims.

When the case was pending on the issue of loyalty and while Gilbert Moyers was the attorney of record, the original brief on loyalty

was filed of nine pages, and a reply brief on loyalty was filed, consisting of three pages, making twelve pages of brief filed while Gilbert Moyers was the attorney of record. While the claim was pending before the Court on merits and the firm of Moyers and Consaul were attorneys, the original brief and abstract on merits was filed by them, comprising thirty-four typewritten pages; and the reply brief on merits consisting of two typewritten pages was also filed; in other words, about three times the amount of brief work was done by the firm of Moyers and Consaul, that had been done before they were substituted as attorneys of record.

The case of Sallie J. Adams, administrator of the estate of Herbert Smith, case No. 4499, Congressional, Court of Claims, is very similar to the case above mentioned. Up until the time claimant's decedent was found loyal Colonel Gilbert Moyers was the attorney of record in the case. After loyalty was found a power of attorney was secured from Mrs. Sallie J. Adams, administratrix of Herbert Smith, the deceased claimant, appointing I. M. Moyers and C. F.
414 Consaul, her attorneys, purporting to have been executed May 18th, 1903, which was filed in the Court of Claims, May 23rd, 1903. At the same time a motion was made to substitute Mrs. Adams, administratrix, together with a certificate showing her to be administratrix, and a motion to substitute C. F. Consaul as attorney for claimant and I. M. Moyers of counsel.

In this case the testimony relied upon in the matter of the merits of property was that taken before the Southern Claims Commission. As attorney for claimant I prepared and filed an original brief and abstract of testimony including an itemized summary and remarks consisting of thirty typewritten pages, which brief was filed May 23rd, 1903. In this case I devoted considerable time to an examination of the Rebellion Records. It appears in evidence that claimant's decedent lived at or in the immediate vicinity of Bennettsville, South Carolina, and I was able to show by the Rebellion Records that Federal Troops were encamped at this place about the time the property was alleged to have been taken by them, and to show by these records that these troops were living in a great measure off of the country, and that official orders had been given to cause all the provisions at Bennettsville to be gathered together for army use, thus corroborating by the records in a large measure the testimony of witnesses. After the Government's brief on merits was filed, I filed a four page reply brief, after which the case was submitted to the court for findings on November 16th, 1903, some months after the death of Colonel Moyers. On December 7th, 1903, find-
415 ings were filed by the Court in favor of the claimant in the sum of $1,826. As presented to the Southern Claims Commission, the claim was for $2,845, and the findings secured in this case were, proportionately to the amount claimed, better findings than the average in cases of this class. A motion to certify the finding to Congress was filed December 22nd, 1903, which was allowed, and this claim was embraced in the Omnibus Claims Bill, approved February 24th, 1905, and was paid in said sum of $1,826. We received a fee of one-third of this sum, less $1, exchange, and our

actual net fee was $607.66. Our fee agreement with the administratrix under which this settlement was made, and to which is appended her receipt for claimant's share of the collection, is here offered in evidence as an exhibit to my deposition, which is marked Exhibit No. —.

It is stipulated between counsel that a copy of the agreement referred to may be made in the record and the copy shall be used as evidence in lieu of the original.

Mr. TUCKER: I object to the admissibility of this fee agreement as in any way binding upon this complainant or upon the partnership existing between Moyers and Edmunds.

(Which fee agreement is as follows:)

Fee Agreement.

This Memorandum of Agreement, Witnesseth: That I, Mrs. Sallie J. Adams, of Bennettsville, South Carolina, as administratrix, of the estate of Herbert Smith, deceased, late of the County of Marlborough, in said State, have employed I. M. Moyers and C. F. Consaul, of Washington, D. C., and each of them, as my attor-
416 ney- to prosecute against the Government of the United States the claim of said estate for Stores and Supplies, taken from said Herbert Smith, now deceased, by U. S. Military Forces during the late Civil War, being Case No. 4499, Congressional, in the Court of Claims of the United States, and in consideration of their professional services in the prosecution of said claim, I hereby agree to pay to said attorneys, as a fee, a sum equal to one-third (⅓) of the amount which may be collected upon said claim, said fee to be a lien on any warrant which may be issued in payment of said claim.

Witness my hand, this 7th day of May, A. D., 1903, in Bennettsville, State of South Carolina.

S. J. ADAMS,
Administratrix of the Estate of Herbert Smith, Dec'd.

Witnesses to signature:
MRS. ROSA BREEDEN.
ILA EASTERLING.

Receipt.

$1,217.33. BENNETTSVILLE, S. C., *M'ch*, 1905.

Received of Moyers & Consaul, att'ys at law of Washington, D. C., one thousand two hundred seventeen dollars and 33/100 dollars ($1,217.33) in full settlement of above claim, being amount collected thereon less their attorney fee of a sum equal to one-third of collection.

MRS. SALLIE J. ADAMS,
Administratrix of Estate of Herbert Smith, Dec'd.

417 The WITNESS (continuing): As to the proportion of work done in this case, there were taken before the Court of Claims three depositions on behalf of claimant on the issue of loyalty. While Gilbert Moyers was the attorney of record a fourteen page brief on loyalty was filed, and a six page reply brief, making twenty pages of brief on loyalty. On merits there was a total of thirty-four pages of brief filed and in addition the labor of searching the Rebellion Records for information bearing upon the case. I should say that about one-half of the work done by Washington counsel was done after I was substituted as attorney of record. Relative to the Rebellion Records mentioned in my testimony and in that of preceding witnesses, I will explain that they consist of something over one hundred volumes. There is a book which purports to be an index to that, but this index is exceedingly incomplete and unreliable, and a thorough examination of these records to secure such information as was obtained and used in these cases, requires an examination of volume after volume, page by page, utterly without regard to any index. The Court of Claims, as I know from experience in many cases of this sort, gives great weight to any corroborative evidence secured from these official records.

Relative to the case of the estate of Herbert Smith and also to that of the estate of Jane Edge, I will state that it was the custom of Gilbert Moyers, as it is the present custom of the firm of Moyers and Consaul, to keep what are termed office dockets of cases, brief entries being made upon these dockets indicative of action taken in
418 such cases. I here produce Docket "E" and refer to page 217 of the same, being the docket record of the case of the estate of Herbert Smith, and also produce and offer this paper in evidence as an exhibit to this deposition, being marked Exhibit No. —. I also produce and offer in evidence as an exhibit to my deposition Docket "H" and refer to page 56 thereof, being the docket entries of the case of the estate of Jane Edge, and I also offer in evidence this paper as an exhibit to this deposition, to be marked Exhibit —.

It is stipulated that the copies of these docket entries produced by the witness shall be received in evidence and used in lieu of the original entries.

The copies so produced being marked Exhibits Nos. — —.

Adjourned.

CUMMINGS
vs.
CONSAUL.

FRIDAY, *May* 11, 1906—10 a. m.

Hearing pursuant to notice.
Present: Messrs. Donaldson and Tucker.

Mr. CHARLES F. CONSAUL is recalled.

By Mr. DONALDSON:

Q. Following the line of your examination at our last session, please state the circumstances under which the present firm of Moyers and Consaul became counsel in the Edge and Smith cases? A. Concerning the Edge case, to keep the cases separate, as there is a slight difference, Miss Moyers and I secured a power of attorney and fee agreement from J. D. Edge administrator of the estate of Jane Edge the original claimant which power of attorney is on file with
419 the Court of Claims papers now before me and executed August 25, 1902. We secured this power of attorney and fee agreement by reason of the abandonment of the Edge claim by Gilbert Moyers, who refused and declined to further proceed with the prosecution of this case, having discovered that it was claimed by the complainant herein to have been alleged to be a Moyers and Edmunds partnership case. In this connection, also, I will state that our employment was by the only person having authority to employ counsel, namely J. D. Edge, administrator of the original deceased claimant. On August 29, 1902, we filed our motion to substitute the firm of Moyers and Consaul together with the power of attorney mentioned and a certified copy of the letters of administration of the said J. D. Edge.

In the case of Sallie J. Adams administratrix of Herbert Smith referred to in the question, we secured a power of attorney from the said administratrix the only person having authority to employ counsel which power of attorney is in this record and was executed May 18, 1903, it was executed to Ida M. Moyers and Charles F. Consaul and each of them. I individually filed a motion to be substituted as attorney of record also filed a motion to substitute the administratrix as formally party claimant, together with a certificate of administration and the other necessary papers. The circumstances under which this action was taken were the same as in the case of the claim of Edge above mentioned, namely Gilbert Moyers had abandoned this Herbert Smith claim on account of his finding that it was claimed by the complainant herein to have been
420 a Moyers and Edmunds partnership case, he declining to further proceed with the transaction of either of these claims mentioned. After Mr. Moyers refused to do anything further with these cases, I suggested to him that he permit Miss Moyers and myself to take them up on our own account, to which he replied in emphatic language, that he did not care what was done with those cases and that they might rot as far as he was concerned.

Q. Mr. Consaul, did Colonel Moyers perform any service whatever, after his abandonment of them, as you have testified? A. Absolutely none.

Q. What was Colonel Moyers' condition of health about this time and state also as to whether he was pursueing his practice regularly or not, about the time of the abandonment of these claims, if you remember? A. Well his health was very bad, but he had not entirely relinquished his ordinary professional work.

Q. Well, was he relaxing his work about that time? A. He was performing less and less of the work of the office and of the Court work, he threw a great deal of the Court work upon me at that time.

Q. State whether or not you had any contract relations with George B. Edmunds, whose administrator is the complainant herein. A. I never did, I never knew Mr. Edmunds.

By Mr. TUCKER:

Q. When did you become connected with the late Gilbert
421 Moyers in a business way? A. I entered into an agreement with him which was executed November 1901, to go into effect January 1, 1902, at which time I actually went into the office with him.

Q. Where was his office then? A. 720 17th Street, N. W.

Q. From that time you were *you* employed by him or in his office with him at that office? A. I was associated with him from that time on under the terms of the agreement of which, I will if desired, put in evidence a copy. Under the terms of this agreement which was in writing and made as I recollect either in duplicate or triplicate, it was provided that Miss Moyers and I were to be associated with him in the prosecution of claims upon a division of fees. A certain division of fees was to be made of fees in cases in which work was done by parties to this agreement during the first year of the contract period and a different division was to be made of cases in which work was thereafter done. We were not partners under this agreement.

Q. Please produce at the next session a copy of the agreement you refer to? A. I will.

Q. After making this arrangement with Colonel Moyers, what proportion of his cases did you and Miss Moyers take up? A. No fixed proportion at all, but the work was simply divided up as seemed expedient in view of the various conditions of the work.

Q. Did your agreement cover all of the cases that he was
422 prosecuting in the Court of Claims? A. All cases in which any of the parties to the agrement thereafter did any work. I may state, however, that I had an individual practice aside from this agreement, which practice was made up principally before the Interior Department.

Q. Was Miss Ida M. Moyers a party to the agreement? A. Yes.

Q. At the time this agreement was entered into had the firm of Moyers and Consaul as now constituted been formed? A. From the time this agreement was entered into Ida M. Moyers and I were co-

partners between ourselves but we were not partners of Colonel Moyers.

Q. As I understand it from the date of this agreement or the time it was to go into effect the present firm of Moyers and Consaul, in any of Colonel Moyers cases in the Court of Claims which it assisted him in prosecuting, was to receive a certain proportion of the fee, is that right? A. We did under the agreement.

Q. Had Colonel Moyers the right under this agreement to seek the assistance of Moyers and Consaul in any case, any one of his cases, that he might elect or select? A. In all of the cases, in which any of the three parties to that agreement performed any services after January 1, 1902, were within the scope of that agreement, that is the general scope of the agreement.

Q. Who fixed the cases that you and Miss Moyers were to participate in? A. All the cases in which any of the parties to the agreement performed any services after January 1902, that is the general scope of the agreement.

423 Q. At the time this agreement was made this case of Cummings *vs.* Moyers Equity No. 20,802 in which we are now taking testimony was pending and had been pending for two years had it not? A. As I now know that suit had been pending and was pending at the time this agreement was entered into, although at that time I never had heard of it.

Q. When did you first know of the pendency of this suit? A. My impression is that I first learned of the pendency of this suit sometime late in the winter or in the spring of 1902.

Q. Did you know that Miss Ida M. Moyers had testified in this case? A. Prior to January 1902.

Q. Yes. A. No, I never heard of the suit in any way prior to that time.

Q. Do you know when she testified in the suit subsequent to January 1, 1902? A. I don't recall, now, though I suppose I must have heard something about it when she testified.

Q. Taking up these three claims the Edge claim the Herbert Smith claim and the Caldwell claim in their order please state when Colonel Moyers abandoned the prosecution of the Edge claim? A. It is impossible for me to keep the precise date but it was subsequent to the filing of the finding by the Court of Claims in favor of loyalty May 19, 1902 and some time prior to the execution of the

424 power of attorney by J. D. Edge administrator to Ida M. Moyers and Charles F. Consaul in August 1902.

Q. When did he abandon the prosecution of the Herbert Smith case? A. It is impossible for me to give the precise date of his abandonment of this case, except that it was not very long before May 1903.

Q. When did he abandon the prosecution of the Caldwell claim? A. By his death.

Q. Then you had no connection with the Caldwell claim before that? A. I had nothing personally to do with the case.

Q. Did you or Miss Moyers assist in the prosecution of the Edge and Smith cases before Colonel Moyers abandoned them and in the

Caldwell claim before Colonel Moyers' death in any capacity whatever? A. From the record of the Court of Claims in the Edge case I appear to have prepared the claimant's reply brief on loyalty which was filed in the Court of Claims April 29, 1902. This brief was signed by me personally, with Colonel Moyers' name and the name of myself and Miss Moyers as "of counsel." From the files of the Court of Claims in the Herbert Smith case I appear to have personally prepared the reply brief on loyalty in this case, which was February 12, 1903, to which brief I signed the name of Gilbert Moyers and the names of Miss Moyers and myself *and* of counsel. As to the Caldwell case I know that I had no personal connection with it prior to the death of Colonel Moyers
425 and I have seen nothing on the record to indicate that Miss Moyers had any personal connection with the case prior to the death of Colonel Moyers.

Q. Will you kindly examine between now and the next session the Court of Claims papers in the Caldwell case and the office papers of the late Gilbert Moyers in the same case together with his docket entries in that case to ascertain whether Miss Moyers in any way assisted in the prosecution of that case so far as discovered by those records? A. I may suggest that Miss Moyers will testify herself as to whether she had anything to do with that case.

Q. Is she going on the stand? A. Yes.

Q. Upon what specific grounds did Colonel Moyers abandon the prosecution of the Edge and Smith claims.

Mr. DONALDSON: I object as wholly immaterial for what ground he did abandon these cases, if it was found that he actually did abandon them.

A. The first claim mentioned, which he abandoned was that of Edge, he discovered that this case was claimed by the complainant herein as being a Moyers and Edmunds partnership claim and to use his exact language, as nearly as I can repeat it, he said something to the effect that those damned scoundrels should not reap the fruits of his labors and that the case might rot so far as any further action on his part was concerned.

Q. Did he mention who the scoundrels were? A. Not by name, except in the the course of conversation, it developed that what he referred to was that it was claimed as a Moyers, Edmunds partnership case.

426 Q. That is in this litigation now pending. A. Yes.

Q. You then had knowledge of the pendency of this litigation? A. Yes.

Q. You knew generally what was claimed by the complainant in this suit? A. No, I cannot say that I did.

Q. You knew by Colonel Moyers' reference to this suit that it was claimed by the complainant herein that the Edge case was a partnership case in which the estate of Edmunds claimed a part interest? A. Yes, from our conversation.

Q. What did he say with reference to his reasons for abandoning the Smith claim? A. I could not give his precise language in regard to the Smith claim except he said about the same as he did in regard to the Edge claim.

Q. That is that it was claimed to be a partnership case by the complainant herein as administrator of Edmunds' estate and that Edmunds had a half interest in it? A. Yes, he said something to that effect, he refused to lift his hands further in any of those cases.

Q. Did or did not you know at that time that Gilbert Moyers was claiming credit as against the complainant in this case for half of the expenses he had incurred in the prosecution of the Edge and Smith claims? A. No, I had absolutely no knowledge of his connection with the case except what he mentioned
427 to me, I may say that Colonel Moyers had different litigations pending and I made it my practice to stear clear of any connection with them.

Q. You understood nevertheless and after that, you knew of the claim of the complainant in this case as administrator of the Edmunds' estate, and you undertook the prosecution of the Edge and Smith claims with knowledge of the pendency of this litigation? A. I have always considered that I was a stranger to the alleged contract between Moyers and Edmunds and to the litigation.

Q. Did you make any inquiries as to who was to have the benefit of the expenditures theretofore made in those two cases. A. None whatever, I simply accepted the abandonment of Colonel Moyers.

Q. In other words you and Miss Moyers were willing and did take advantage of all the expenditures made by Colonel Moyers in the prosecution of those and made no inquiries as to the right of the complainant as administrator of Edmunds, although you knew of his claim of interest, you were willing and did prosecute under the contract from the claimant to prosecute the claim after such alleged abandonment?

Mr. DONALDSON: That is objectionable because it is wholly immaterial whether they were willing and did take advantage of the expenditures made by anybody in any case, if the case had been abandoned.

A. It is rather difficult to answer that question, which seems to embrace more than one point. So far as taking advantage
428 of expenditures previously incurred by any parties in the case, of course whenever an attorney abandons a case he loses whatever he had done in the case. We represent at the present time a number of cases before the Court of Claims which have been abandoned by previous counsel. So far as the alleged rights of the complainant herein against Gilbert Moyers were concerned I felt that I had absolutely nothing to do with that. If the complainant had any claim against Gilbert Moyers in the premises, that was something that did not concern me in the least. So far

as the question refers to Miss Moyers, I will say that I think she was present when Gilbert Moyers abandoned the Edge case, but the conversation relative to the case was between Gilbert Moyers and myself, and so far as the Smith claim is concerned, I do not believe she knew anything about it personally.

Q. Under the agreement that you have referred to which you and Miss Moyers made with the late Gilbert Moyers which went into effect January 1, 1902, were or were not you and Miss Moyers entitled to a portion of the fee in the Smith and Edge claims you both having participated in the prosecution of those claims before Gilbert Moyers' alleged abandonment of them.

Mr. DONALDSON: That is objectionable because it is immaterial whether they were or not. If as a matter of fact the claims were abandoned by Gilbert Moyers his agreement will have to — no partnership between the parties, and give no interest to either Miss Moyers or Mr. Consaul in any cases.

Q. We would have been entitled to share in the fee in each of these cases acting as Washington Counsel, had be not subsequently become entitled to the entire fee.

429 *A.* So that by abandoning your right under your agreement with Gilbert Moyers and by making new contracts with the claimants you increased the amount which you would receive as fee if the claim were allowed, is that right?

Mr. DONALDSON: I object as immaterial.

A. Assuredly.

Q. This agreement which went into effect January 1st, 1902, you stated didn't constitute you and Miss Moyers and Gilbert Moyers partners? A. No, I drew that agreement myself, so drew it that we would not be partners of Gilbert Moyers.

Q. Did it then constitute you and Miss Moyers in the employ of Gilbert Moyers? A. That would really be a matter of construction of the contract and which will more fully appear when the contract itself is put in evidence.

Q. What were the circumstances under which you obtained the written consent of Gilbert Moyers to the substitution of Moyers and Consaul as attorneys in the Smith and Edge claims? A. As shown by the record in the two cases I individually appeared as substituted attorney in the Smith case and Moyers and Consaul appear as substituted attorneys in the Edge case. The circumstances under which the written consent of Colonel Moyers was secured to the substitution of other attorneys would seem to have been quite fully stated by my explanation of his abandonment of those cases his assent to the motions to substitute other attorneys in these c[illegible] being simply a matter of placing in the records of the Court of Claims his abandonment thereof.

430 Q. Did he sign these consents to the substitution of Moyers and Consaul before or after you procured the new contracts and powers of attorney from the claimants? A. After the new powers of attorney were secured from the claimants, until we

secured these new powers of attorney we had no basis for moving to substitute new attorneys.

Q. Did he object to the signing of these consents? A. Not in the least, this was in accord with his previous statements.

Q. Who notified the claimant in the Edge and Smith cases of Colonel Moyers abandonment of the prosecution of those claims? A. I could not say if anybody for certain, but my recollection is that I prepared or dictated letters to the claimants which were either signed by or approved by Colonel Moyers.

Q. Was any explanation given the claimants of Colonel Moyers abandonment of the prosecution of their claims? A. I think not, merely the statement of Colonel Moyers assent to our being made the attorneys.

Q. Did the claimants make any inquiries as to the reasons which actuated their attorney Gilbert Moyers to abandon their claims? A. No.

Q. They were willing apparently to accept the substitution of you and Miss Moyers without question? A. Yes.

Q. Will you kindly produce the correspondence that you had with the claimants in the Edge and Smith claims at the next hearing that is to say after this alleged abandonment? A. An ex-
431 amination of the jacket in the Edge case seems to discover no letters at all from the claimant in that case relative to the substitution of attorneys.

Q. How about letters to the claimant? A. The system of keeping copies in our office is that of press copy books.

Q. Please produce at the next session copies of letters written to the claimant after this alleged abandonment of the Edge claim and produce all letters received from the claimant in that regard and the same in reference to the Smith claim? A. The examination of the office jackets in the Smith case now before me shows that no letters from the claimant in that case were received relative to the substitute of attorneys. In both of these cases the office jackets have all been put in evidence.

Q. Where are they Mr. Consaul? A. Here they are. (indicating papers on the table.)

Q. If this correspondence I have referred to is not in these two jackets that you have produced, I understand that you have no such correspondence. A. Your understanding is correct except for copies of letters written from the office to the claimants, which are in the press copy books.

Q. Then, as I understand it no letters were received from the claimants in the Edge and Smith claims after the alleged abandonment by Gilbert Moyers of those claims, is that right? A. I did not say that no letters were received from them after Colonel Moyers abandonment, but I did say or mean to say that I did not
432 find any in looking over the claimants' jackets in those two cases, relative to the substitution of attorneys.

Q. Where are the letters if any exist that were received from claimants after this alleged abandonment? A. In these jackets here produced, but in view of the fact that I do not usually file letters

away in the office jackets myself, I would not like to swear positively as of my own personal knowledge that letters were not received which are not on file in these jackets, but I have no knowledge of them.

Q. Will you produce copies of the letter that you wrote the claimants in the Smith and Edge claims relative to this proposed substitution of attorneys? A. I will have copies made from the press copy book.

Q. Please bring with you the press copy books that we can have them compared with the copies? A. Certainly.

Q. At the time of the alleged abandonment by Gilbert Moyers of these Edge and Smith claims, did he similarly abandon any other claims on that ground which you and Miss Moyers then undertook to prosecute?

Mr. DONALDSON: I object as immaterial as this reference is confined to these three claims.

A. These are the only two claims that were abandoned by him on this ground, that I know of.

Q. Do you mean on that ground? A. Yes.

Q. Were you and Miss Moyers substituted as attorneys in
433 place of Gilbert Moyers in the prosecution of any cases that he had prosecuted prior to his death?

Mr. DONALDSON: I object as wholly immaterial in this reference because the question does not restrict the cases to those claims by the complainant to be partnership cases.

A. Do you mean that the substitution occurred prior to Colonel Moyers' death?

Q. Yes. A. I recall no other cases in which we were substituted for Colonel Moyers prior to his death.

Adjourned.

In the Supreme Court of the District of Columbia, Holding an Equity Court for said District.

Equity. No. —.

H. B. CUMMINGS, Administrator of Edmonds,
vs.
CHARLES F. CONSAUL ET AL.

Continuation of Testimony Before the Auditor.

WASHINGTON, D. C., *May 21st*, 1906.

Met pursuant to agreement of counsel at the law offices of Mr. R. Golden Donaldson, Century Building, for the purpose of taking further testimony on behalf of the defendants in the above entitled cause.

Present: Mr. Charles Cowles Tucker for the complainant; Mr. R. Golden Donaldson and Mr. Charles F. Consaul for the defendants, and witnesses.

434 Whereupon CHARLES F. CONSAUL, one of the defendants, being heretofore sworn, was recalled for further cross examination and testified as follows:

WITNESS: As requested by counsel for the complainant at the previous sitting I now produce office press copy books containing copies of following letters. One letter dated August 21st, 1902, and addressed to Mr. J. D. Edge and one letter dated March 18th, 1903, addressed to Mrs. S. J. Adams. Each of these letters as shown by the press copy was signed by Gilbert Moyers. As previously testified to by me I had these letters prepared for his signature. To obviate the necessity of leaving in this record the press copy books, which are in constant use in the office, by consent of counsel for the complainant I file as exhibits to my deposition copies of these press copies. Said letters are in words and figures following, to wit:

Estate of JANE EDGE, Dec'd. Docket H, 56.

AUGUST 21, 1902.

J. D. Edge, Esq., Loneoak, Texas.

DEAR SIR: We are in receipt of your favor of August 1st, addressed to our Mr. Consaul, advising us that you have been appointed administrator of the estate of your deceased mother, Jane Edge.

I enclose herewith the following papers, to wit:—

1. Power of attorney.
2. Fee Agreement.
3. Petition.

435 Please execute and return to us these papers at once, in order that you may be substituted as the formal claimant before the Court of Claims, and that the brief may be filed on merits.

As I. M. Moyers and C. F. Consaul, who are associated with me, have filed the previous briefs in the case, are familiar with all the details of it and will have immediate personal charge of the conduct of the case before the court, the inclosed power of attorney to them is all right.

Please be sure to sign each of said three papers, as follows, to wit:—

"J. D. EDGE,
Administrator of the Estate of Jane Edge, Deceased."

Have your signature to the Power of Attorney and Fee Agreement attested by two witnesses and acknowledge the power of attorney and swear to the petition before a Notary Public, or some officer, authorized to administer oaths and having seal.

Also send to us with said papers, a duly certified copy of your letters of administration, certified by the Clerk of the Court which granted same, as it will be necessary for us to file such a copy with the motion which we must file to substitute you as the claimant.

Kindly give the matter your immediate attention, as by prompt action at the present time, it may be possible to secure an allowance of

the claim in time for the appropriation which we hope to secure during the next session of Congress.

Please address your reply directly to Mr. Consaul, as you
436 did your letter of August 1st.

Yours very truly,

(Signed) GILBERT MOYERS.

(3 inclosures.)

Estate of HERBERT SMITH, Docket E, 217.

MARCH 18TH, 1903.

Mrs. S. J. Adams, Adams House, Bennettsville, South Carolina.

DEAR MADAM: We are pleased to advise you that after a very long and arduous contest we have succeeded in securing from the Court of Claims, the finding to the effect that your deceased father, Herbert Smith, was loyal to the United States Government during the late war. This plases us in shape to present the claim to the Court upon its merits for a finding as to the amount which should be paid by the Government.

Before we can file our brief upon merits, we must have an administrator appointed for the Estate of Herbert Smith, deceased. We would suggest that it would be well for you to be appointed administratrix, as then you would be to very little expense in the matter. It will be absolutely necessary to have an administrator appointed before we can proceed further, as the Court insists that the claim of an estate shall be presented by an administrator. Please have yourself appointed administratrix at once and execute and return to I. M. Moyers and C. F. Consaul, the inclosed power of attorney and fee agreement. The power of attorney and fee agreement
437 made to them is satisfactory as they have charge of the case. The fee agreement is in accordance with the previous understanding.

As soon as the power of attorney and fee agreement is received, together with certified copy of letters of administration, I. M. Moyers and C. F. Consaul will again place the case before the Court for a final finding. Please send your letter in the inclosed envelope so that it may reach them direct.

Yours very truly,

(Signed) GILBERT MOYERS.

WITNESS: And also as requested by counsel for the complainant at the previous sitting I here produce the original agreement entered into between Gilbert Moyers, Ida May Moyers and myself November 21st, 1901, and with permission of counsel for complainant will leave in this record as an exhibit a copy of this agreement, desiring to retain the original for possible future use. Said agreement is in words and figures following, to wit:

This Memorandum of Agreement, Made and entered into on this twenty-first day of November, A. D. One Thousand Nine hundred One, by and between Gilbert Moyers, of the City of Washington,

District of Columbia, party of the first part, and Ida May Moyers, of said city and District, and Chas. F. Consaul, now of the City of Cripple Creek, State of Colorado, parties of the second part, witnesseth:

That Whereas, said party of the first part is now engaged in the practice of law and in the prosecution of claims against the Government of the United States, before the Court of Claims of the
438 United States and before Congress, and desires the assistance of said parties of the second part in the conduct of said practice and business.

Now Therefore, said parties of the second part hereby agree to contribute their professional services to said business, as lawyers, beginning January 1, 1902, and it is further agreed and understood between the parties hereto:

I. That said parties of the second part shall receive from said party of the first part, in consideration of their services, to be rendered during the year 1902, a sum of money equal to one-half (½) of the attorney fees received by said party of the first part in any and all cases upon which any of the parties hereto may render services during said year 1902.

II. That said party of the first part shall defray all expenses incident to the operation of said business for said year 1902:

III. That for services rendered after said year 1902, said parties of the second part shall receive from said party of the first — a sum equal to two-thirds (⅔) of all attorney fees received by said party of the first part from said practice and business.

IV. That after said year 1902, said parties of the second part shall pay each year to said party of the first part a sum of money equal to two-thirds (⅔) of the expense of operating said business for said year.

Witness the hands of the parties hereto, in the City of Washington, District of Columbia, the day and year first above written.

GILBERT MOYERS.
IDA M. MOYERS.
CHAS. F. CONSAUL.

439 CITY OF WASHINGTON, *District of Columbia, ss:*

Before me, Frank L. Neubeck, a Notary Public in and for the District of Columbia, personally appeared Gilbert Moyers, Ida May Moyers and Chas. F. Consaul, personally known to me to be the persons whose names are signed to the above agreement, and acknowledged to me that they signed and delivered said instrument of writing as their own free and voluntary acts for the uses and purposes therein set forth.

My commission expires Sept. 30, 1906.

Witness my hand and Notarial Seal, this 21st day of November, A. D. 1901.

FRANCIS L. NEUBECK,
[SEAL.] *Notary Public.*

Cross-examination.

By Mr. TUCKER:

Q. Mr. Consaul, you have heretofore testified that Mr. Moyers abandoned the Edge and the Smith claims during his lifetime because of the connection of the Edmonds Estate with them. Is this right? A. Not strictly. I testified that he abandoned them because of the alleged claim of the administrator of Edmonds with those two claims.

Q. That abandonment of those two claims by him was
440 evidenced by what acts on his part? A. In the first place by signing the two letters which have just been placed in evidence requesting the claimant to execute a power of attorney and fee agreement to Miss Moyers and myself and later in each case by his assenting in writing to the motion to substitute myself as attorney of record in one case and Miss Moyers and myself jointly as attorneys of record in the other case.

Q. Are these the only acts of his from which you infer that he abandoned the prosecution of these cases? A. The only acts save the conversations and statements made by him as previously testified to by me and his non-action in these cases after that.

Q. In the letter to J. D. Edge dated August 21, 1902, which you have just placed in evidence, Mr. Moyers stated, "As I. M. Moyers and C. F. Consaul, who are associated with me, have filed the previous briefs in the case, are familiar with all the details of it and will have immediate personal charge of the conduct of the case before the Court, the inclosed power of attorney to them is all right." Do you construe that as an abandonment of the prosecution of this case, or did you construe this to be an abandonment of the prosecution of this Edge case? A. I did not construe the language itself to constitute the abandonment. He had abandoned the case before I prepared that letter for his signature.

Q. Abandoned it to whom, to the claimant, in any correspondence with the claimant? A. No, sir, he had simply stated in the conversations previously referred to in my testimony that the
441 case might rot before he would lift his hand to do anything further in it; that he would have nothing further to do with the case.

Q. You construe his statement then to you that the case might rot as an abandonment by him of the case without the communication of his intention to his client. Is that right? A. That is right.

Q. In the letter to Mrs. S. J. Adams dated March 18, 1903, which you have just placed in evidence, the late Gilbert Moyers said: "Please have yourself appointed administratrix at once and execute and return to I. M. Moyers and C. F. Consaul, the inclosed power of attorney and fee agreement. The power of attorney and fee agreement made to them is satisfactory"—I suppose it means satisfactory. A. The press copy you will see was blurred. It looks as if it meant "satisfactory as." It looks as if the next word would be "as." That would be the context.

Q. I don't see any objection to making it read straight. A. I have no objection. Just make it "satisfactory as they have." "The power of attorney and fee agreement made to them is satisfactory as they have charge of the case."

Q. Who gave Moyers and Consaul charge of this case? A. The claimant gave us legal charge of the case after the letter in question was written.

Q. Who gave Moyers and Consual charge of the case prior to the date when this letter was written? A. Gilbert Moyers.

Q. When was that? A. It is impossible to say. I know
442 before that letter was written I had prepared one brief in the case, and then in this case as in the Edge claim Col. Moyers upon noticing that this was an alleged Moyers and Edmonds partnership case refused to take any other steps in it or have anything further to do with it.

Q. Did he communicate with his client and refuse in such communication with his client to continue the prosecution of the case prior to the date of the writing of this letter? A. No, sir, this letter was the only letter to the client in that regard.

Q. So that in the Smith case as well as the Edge case, Mr. Gilbert Moyers' abandonment of it consisted in that statement to you that the case might rot or something to that effect? A. That and his subsequent action in permitting powers of attorney and fee agreements to be made to us.

Q. You say permitting powers of attorney and fee agreements to be made to you. As a matter of fact did he not request the client to make the power of attorney and fee agreement out to you and send them to you? A. Yes, sir, he requested it by these letters which I had dictated for him to sign.

Q. And his purpose so far as you know was to prevent the administrator of the Edmonds Estate from thereafter deriving any benefit from any fees that might be collected in these cases, is not that right? A. His direct purpose was to eliminate himself from any further connection with the cases.

Q. And you construe these letters as an elimination of
443 himself from any interest in these two cases? A. His letters and his conversations with me in eliminating himself absolutely from any connection with or interest in either of these cases.

Q. As you prepared these two letters to Mr. Edge and Mrs. Smith for Gilbert Moyers to sign, why didn't you say in so many words that Mr. Gilbert Moyers had abandoned the prosecution of the cases and request them to employ new counsel in you and Miss Moyers? A. I could not say why the letter was not prepared in a certain way, but they seemed to have answered. They attained the desired results written as they were.

Q. You have heretofore testified that you and Miss Moyers had assisted Col. Moyers in the prosecution of this Edge and Smith claim prior to his alleged abandonment of their prosecution under the terms of this agreement of November 21, 1901, between you and him. If you had continued to assist him in the prosecution of

those claims without yourself procuring new powers of attorney and contracts what proportion of the fee would you and Miss Moyers have been entitled to? What proportion of his share of the fee would you and Miss Moyers have been entitled to?

Mr. DONALDSON: Objected to as wholly immaterial and irrelevant.

A. As the case of Edge was submitted to the Court of Claims upon the merits for final determination on December 1st, 1902, I should say under the terms of that agreement we would have been entitled—that is, Miss Moyers and myself jointly, to one-half of any fee received.

444 Q. Any fee to which Gilbert Moyers would have been entitled to? A. Any fee received by Gilbert Moyers in that case had we not been ourselves substituted as the attorneys.

In the case of Smith, which was not completed until 1903 my construction of the terms of that agreement between us and Col. Moyers would make us entitled to two-thirds of the attorney fee had we not been ourselves substituted and become entitled to the whole fee.

Q. You know of the claim of the administrator of the Edmonds' Estate to a share in the fees in these two claims, did you not? A. At what time?

Q. Prior to your procuring powers of attorney and fee agreements from the claimants? A. Yes, sir, from conversations with Col. Moyers.

Q. Have you a copy of the letter to the claimant in the Caldwell claim written by you and Miss Moyers after Col. Moyers' death in which you sought to procure from the claimant a power of attorney and fee agreement? A. I have no recollection now of any such letter having been written, but if it was written I suppose that it would appear in our press copy book.

Q. Do you recall the circumstances under which you procured the power of attorney and fee agreement from the claimant in this case after Col. Moyers' death? A. The power of attorney from Mrs. Eaton, the exec/trix of Lucy A. Caldwell, to R. W. Haynes, Miss Moyers and myself was procured by Mr. Haynes.

445 Q. You had no direct communication with the claimant? A. I will not say positively whether we wrote directly to Mrs. Eaton in the endeavor to secure a power of attorney or not.

Q. If you have such a letter will you be kind enough to produce a copy of it at the next hearing, or if you wrote any such letter will you be kind enough to produce a copy of it at the next hearing? A. I will, but to continue my answer, I will say that if we did write such a letter it secured no results and we had to act through Mr. Haynes who controlled the case himself.

Q. Did either you or Miss Moyers assist Col. Moyers in the prosecution of the Caldwell claim prior to Col. Moyers' death? A. I know that I did not, and I don't think that Miss Moyers did, judging from the record.

Q. How long after Col. Moyers' death did you take up the matter with Mr. Haynes in procuring a power of attorney and fee agreement from the claimant in the Caldwell case? A. I could not answer that of my own recollection, but it was not long after Col. Moyers' death. I see that the power of attorney to Moyers and Consaul and R. W. Haynes purports to have been executed June 29th, 1903.

Q. What is the date of Col. Moyers' death? A. He died June 13th, 1903. From these facts it is obvious that the matter was taken up with Mr. Haynes soon after Col. Moyers' death.

Q. Where did the claimant live? A. In Arkansas.

446 Q. At the time of Col. Moyers' death you and Miss Moyers had custody of all of the papers in the Caldwell case as well as in other claims that he was engaged in prosecuting, did you not? A. Of the office papers, yes, sir. Not of the Court of Claims files.

Q. At the time of his death you and Miss Moyers and Col. Moyers were all in the same offices, were you not? A. All keeping the same office, which offices were rented in my name and for which I paid the rent.

Q. Why were they rented in your name? A. They just happened to be. I was the one who made the agreement with the agent. The rent was paid by Miss Moyers and myself while we were in the Bond Building.

Q. Before procuring this power of attorney and fee agreement in the Caldwell claim did you examine the Court of Claims papers to ascertain whether the late George B. Edmonds had ever as attorney of record participated in the prosecution of the case? A. I don't believe that I examined the papers myself until the power of attorney to Mr. Haynes and my firm had been received, though I cannot say positively as to that.

Q. At the time you procured said power of attorney and fee agreement you knew that this suit by the administrator of George B. Edmonds was pending against Gilbert Moyers? A. I knew of the pendency of this suit, but had no recollection or any knowledge that it embraced this case as I had no personal knowledge of this pending suit.

Q. It appears that you and Miss Moyers were appointed administrators of the Gilbert Moyers estate on July 10th, 1903. After

447 your appointment and qualification did you examine the papers in the Caldwell claim or the proceedings in the pending cause to ascertain whether the estate of George B. Edmonds was claiming a part of the fee in that case? A. I do not know that I ever did examine those papers for the purpose of ascertaining that fact, but, of course, I did examine the record for the purpose of preparing the case for argument before the Court of Claims. The power of attorney to Moyers and Consaul was given before we were administrators.

Q. How many days before you were made administrators? A. The power of attorney speaks for itself as having been executed

June 29th, 1903, and I think that we were appointed administrators early in July, 1903.

Q. As I understand it, you continued the prosecution of this Caldwell claim after your appointment as administrators without making any effort to ascertain whether in the pending case of Cummings, as administrator of Edmonds, against Gilbert Moyers, and afterwards against yourself and Miss Moyers as his administrators, or without endeavoring to ascertain from the files of the Court of Claims, whether the estate of Edmonds claimed a portion of the fee in the Caldwell case. Is that right? A. That is rather a difficult question to answer explicitly. I have no recollection that I had any occasion to examine into the case for the purpose mentioned, though I became advised at some time before the fee was collected that the Edmonds estate was claiming an interest or not.

448 Q. In how many of these claims in which the Edmonds Estate is claiming a portion of the fee were you and Miss Moyers substituted as attorneys of record in the Court of Claims prior to Col. Moyers' death?

Mr. DONALDSON: Objected to.

A. The Edge and Smith claims of that class are all that I know of.

Q. Between now and the next session will you be kind enough to examine your papers and files and the Court of Claims files in Congressional case No. 5842. A. What is the name of the case?

Q. I don't know the name of it, and ascertain whether you were substituted as attorneys for Gilbert Moyers in the Court of Claims prior to his death? A. No, sir, I will not make any such examinations unless it seems to be material to this case.

Q. I call upon you to produce the office records and dockets of the late Gilbert Moyers relating to Congressional case No. 5842, the claim of G. W. Bane, and I request you as attorney of record in that claim and in the Court of Claims to produce at the next session the Court of Claims papers in that case. A. If that case has anything to do with the pending reference, I will do so; otherwise I will not. Now, that you have given me that name I will answer that I recollect the case of Bane, a West Virginia case, which is now in our hands and in which I suppose we have been duly substituted as attorneys of record.

449 Q. Was that substitution before or after Col. Moyers' death? A. I have no personal recollection as to that date. I simply remember that I have been endeavoring to secure testimony in it for several years. I have no objection knowing the case now to state at the next hearing the date of our substitution subject to the general objection of relevancy and materiality of the evidence.

Q. You and Miss Moyers have been substituted as attorneys of record in a number of these cases in which the estate of Edmonds claims a fee subsequent to Col. Moyers' death, have you not? A. I am not cognizant of all that the estate of Mr. Edmonds claims, as the claims seem to be as broad as the dockets of the Court of Claims.

I should not be at all surprised if we have not been substituted in some of them.

Q. Have not you and Miss Moyers in your capacity as administrators of Gilbert Moyers claimed, and have you not been allowed, as such credit for expenses incurred by Gilbert Moyers in a number of cases in which you have since been substituted in your personal capacity as attorneys of record for the claimants in the Court of Claims?

Mr. DONALDSON: That is objected to.

A. I deem it very likely that the firm of Moyers and Consaul has been substituted as attorneys of record in some cases in which the Auditor has made an allowance to the estate of Gilbert Moyers for expenses incurred by him prior to his death.

Q. And this is true of about how many cases do you think?

Mr. DONALDSON: Same objection.

A. That would be impossible for me to tell. I could not say that that is true in a single instance and it might be true in twenty.

450 Q. Would you give me a list of such cases at the next hearing after examining your papers and records?

Mr. DONALDSON: I think the witness should be instructed that he might with propriety decline that request for the reasons heretofore stated unless compelled to do so by the Auditor or by the Court.

A. I have no objection to giving all reasonable information, but unless I am directed by the Court I don't intend to give days of my time to the preparation of utterly immaterial data in this case.

Mr. TUCKER: That is all I want to ask Mr. Consaul.

R. W. HAYNES, produced as a witness for the defendants, testified as follows:

By Mr. CONSAUL:

Q. Please state your occupation and residence? A. I am an attorney at law and live in Washington.

Q. How long have you been engaged in the practice of law? A. It has been about twenty-five years since I was admitted to the bar, I guess.

Q. State whether or not you are a member of the bar of the Court of Claims? A. Yes, sir.

Q. State whether you had any personal connection with the prosecution or the collection of the claims of the estate of Lucy A. Caldwell before the Court of Claims or Congress? A. Yes, sir, I had connection with that claim. It came to me in the winter

451 of 1902, when a bill was passed referring it to the Court of Claims. That is when I became connected with it.

Q. By whom were you employed as attorney in that case? A. I was employed by Mrs. Eaton—Lucy J. Eaton. I think her name is. She was executrix of the Caldwell estate.

Q. State whether or not after your employment by Mrs. Eaton you found that any other attorney had previously been acting in the case for the claimant? A. After this resolution or bill was passed by the Senate referring the case to the Court of Claims I had some correspondence with Mrs. Eaton and then I found that Mr. Moyers had been her attorney, and she sent me an order on him to deliver all the papers over to me, and I saw Col. Moyers about it and found that he had been in the case, I believe, but had not done much of anything or made any progress.

Q. State whether you and Gilbert Moyers became associated thereafter in the prosecution of the claim before the Court of Claims? A. Yes, sir. I think after that resolution was passed and I had my correspondence with Mrs. Eaton I went up to see Mr. Moyers and he had done some work in the case—taken some depositions, I believe, and prepared a brief on loyalty, but he had stopped because he said he could not do anything more under the provisions of the Bowman Act; so he was stuck, but under this new resolution we had gotten through he thought he could make some progress, and I then became associated as attorney of record in the case, or counsel.

Q. State who controlled the attorneyship of that case at the time you and Gilbert Moyers became associated together? A. I controlled it from Mrs. Eaton.

452 Q. Do you know whether there were any particular facts which gave Mrs. Eaton, the executrix, confidence in you especially? A. Yes, sir. She knew Mr. Caldwell very well and I think there was some connection by marriage or otherwise, I don't recollect now what, and she was kind of dependent on him to get it through Congress—get the bill through, and he and I are from the same city in Illinois where both voted and I did business there with his bank, and so he came to me—I believe he wrote her and said that anything I would do she could depend upon as being all right and if anything was allowed she would get her money—she wanted her draft, of course, and in that way there was a confidence reposed in me that there would not be in a stranger. Of course, he knew me.

Q. Was the Mr. Caldwell referred to the Honorable Ben. Caldwell recently a member of Congress. A. Yes, sir, he was a member of Congress.

Q. Why didn't you and Gilbert Moyers continue to be associated together until the final collection of the claim? A. Well, Mr. Moyers had an accident which resulted in his death just after we became associated I think.

Q. Who controlled the attorneyship in the case after the death of Gilbert Moyers? A. I believe that I did.

Q. With whom did you associate yourself after the death of Col. Moyers in the prosecution of this claim? A. Well, I talked the matter over in his office with Mr. Consaul, and I went up to

453 see Mr. Consaul once or twice after Mr. Moyers' death and discussed the matter with him as an attorney and suggested that we go on with the case—take it up together, seeing that he was

familiar with the case—with that class of cases that is carried on in the Court of Claims.

Q. Did you know whether or not at the time you agreed to associate Moyers and Consaul with you in this case that they were administrators of Gilbert Moyers' estate? A. No, sir, I knew nothing about that whatever. I don't know it now for that matter, except you just spoke about it.

Q. State whether or not their previous association with Gilbert Moyers was the cause of your placing the claim in their hands after the death of Gilbert Moyers? A. What do you mean?

(Hereupon the question was repeated.)

A. I would not say that; no, sir. The fact that Mr. Consaul was practicing in this line of cases caused me to think that he would be a good man to have associated with me in the matter.

Q. Had you made any inquiries concerning the firm of Moyers and Consaul, or either member of that firm, before you placed the matter in their hands? A. I had knowledge of the firm and did not have to make any special inquiries. I knew how they stood. I don't think Mr. Caldwell liked Mr. Moyers. He was not satisfied with the progress that he had made. He was depending on me and so I was looking for the best man I could find to help me along. That is about the position I was in.

454 Q. Please state if you recollect in what condition the Caldwell case was left at the death of Gilbert Moyers, and especially as to whether it was ready for trial? A. Now, if I remember the last talk I had with Col. Moyers before his death he had prepared his brief, possibly both on loyalty and merits, but I know on loyalty. He was not very well satisfied with it and taken together we were not very well satisfied to go on with it, and as I remember it stood just in that position. It was a hard case when you got right down to it. It was a hard case.

Q. Please state if you recollect what was done on behalf of the claimant before the Court of Claims by yourself or associate counsel after the death of Col. Moyers? A. Well, after Col. Moyers' death I had as I say—I saw Mr. Consaul in regard to it and we went over it—I think we took up the brief prepared by Col. Moyers and discussed the matter of changing or substituting or adding to that brief, and Mr. Consaul went to work on it, and I know I had one or two letters or 'phones from him to come up there and go over it with him or something of that kind. He worked with me from that time. I believe a substitute brief was filed. That is my impression. I looked over my papers this morning, but I could not find it. I don't know as I have a copy of it, but I am satisfied that there was a substitute brief filed both on loyalty and merits by Mr. Consaul.

Q. Did you know or do you now recollect whether the case was argued orally or not? A. It was argued orally by Mr. Consaul. I know that he notified me of the time set for the argument, but I had some matters on hand that I could not leave to be present. It seems to me that I was called to New York, but I know it was orally argued by Mr. Consaul.

455 Q. Please state whether you have had any experience before the Court of Claims or Congress in the prosecution of

war claims other than this Caldwell case? A. Well, I have had some experience; yes, sir, in both places. I have had twelve or fifteen cases or something like that. I don't make a specialty of it as Mr. Consaul does, of course.

Q. From your experience in the prosecution of war claims, state whether in your opinion the Caldwell case could have been or would have been won before the Court of Claims if it had been presented on the briefs filed before the death of Gilbert Moyers?

Mr. TUCKER: Objected to as the witness has not qualified himself to testify as an expert; on the further ground that the subject matter of the question is not a proper matter for the expression of an expert opinion upon, and upon the further ground that the question calls for the inference and conclusions of the witness and not for facts.

A. Well, I will answer it in this way, that I don't think that Col. Moyers expected to win the case. That is the impression I got from my talk with him. I think he was very much in doubt about winning it.

Mr. TUCKER: I move to strike out the answer as giving hearsay testimony and as in no wise responsive to the question.

Q. Please state whether you as the attorney for the claimant prior to the death of Gilbert Moyers deemed this claim a good claim?

Mr. TUCKER: Objected to.

456 A. I thought on its merits the claim was all right. I thought they proved up the property taken if I remember rightly, but the question was of showing the loyalty of the claimant. It was a doubtful case on that proposition.

Q. Referring to the power of attorney to the firm of Moyers and Consaul and to yourself purporting to have been executed by Mrs. Lucy J. Eaton, June 29th, 1903, authorizing the prosecution of this claim, please state who secured that power of attorney or its execution? A. I secured it.

Q. Did you receive any of the attorney's fee upon the collection of this Caldwell claim? A. Yes, sir, I received a fee in the case.

Q. How much did you receive, if you recollect? A. What, the net amount after allowing some expenses—yes, sir, my fee was $750.00. That is what I got out of it. I was thinking that there were some costs that were allowed that case in ahead of the fee.

Q. Did $750.00 represent one-half of the net fee? A. I think not. I allowed Mr. Consaul a little bonus.

Q. Why did you not insist on retaining one-half of the net attorney fee for yourself?

Mr. TUCKER: Objected to.

A. I think I told him if he won out on that case he ought to have a pretty good fee. I was willing to be very fair in the matter and I thought we were very fortunate in getting the allowance we did.

Q. Did you ever know George B. Edmonds, whose estate is the

complainant in this case? A. No, sir, I never knew Mr.
457 Edmonds.

Q. Had you ever any transactions with him? A. Not to my knowledge.

Q. Did you ever hear of him in connection with the prosecution of the Caldwell claim? A. No, sir.

By Mr. DONALDSON:

Q. Mr. Haynes, you have stated that you never had any business relations with George B. Edmonds and never knew him? A. Yes, sir.

Q. Did you ever hear of his making any claim to a portion of the fee in this case prior to your being asked to come here as a witness? A. No, sir, I never heard of anything of that kind.

Q. Mr. Haynes, as I understand you at all times controlled this case from the time it came to you prior to Col. Moyers' death until after the allowance and collection had been made?

Mr. TUCKER: Objected to.

A. Yes, sir, that is my belief.

Q. And you had the authority to control it from Lucy J. Eaton, executrix, under the circumstances that you have already related through Mr. Caldwell?

Mr. TUCKER: Objected to.

A. Yes sir, Mrs. Eaton wrote me to take the case.

Mr. TUCKER: Objects to witness testifying without production of letter.

A. (continued). And gave me an order on Col. Moyers to deliver the papers over to me and for me to look after the case.
458 Q. Did she make any mention of having theretofore employed or consulted with George B. Edmonds? A. No, sir.

Q. Did you at any time receive any intimation from her that she had at any time consulted with George B. Edmonds about it? A. No, sir.

Cross-examination.

By Mr. TUCKER:

Q. Mr. Haynes, what did you do with this written order from Mrs. Eaton on Col. Moyers to surrender the papers in this case that you have referred to? A. I believe I have it. I was called to testify here in December and I had some of my letters together and I was suddenly summoned west on account of my father's death and I placed those papers so I could lay my hands on them and this morning I was going to look at them again. I think it is in my papers somewhere. It got misplaced. I have got the order somewhere.

Q. Will you be kind enough to produce that letter? A. Yes, sir, I will with pleasure.

Q. After receiving this order what did you do? A. I think I saw Col. Moyers.

Q. Did you demand from him his retirement from the case and his surrender of all papers to you? A. I showed him the order, of course. He understood what it was.

Q. Why didn't he retire from the case and surrender the
459 papers to you? A. He had done some work in the case and after talking it over together I concluded that we better go on with them. I think he was then at work on a brief or something of that kind on loyalty and merits.

Q. How much work had he done in the case at that time? A. I think he had outlined a plan of argument.

Q. I mean prior to the preparation of this brief, how much testimony had he taken? How many years of labor had he bestowed on the prosecution of the case? A. That I do not know. The testimony had been taken down there I think by some local counsel.

Q. Had not the case been pending since about 1887? A. I cannot answer that.

Mr. DONALDSON: The answer is objected to, etc.

Q. Had not all the work on the case been done in the way of taking testimony, etc., except the preparation of the brief and statement of the case to the Court of Claims on oral arguments at the time you became connected with it in this way? A. I don't know what he had done. He was up against it and he could not——

Q. Answer my question please, Mr. Haynes.

(Hereupon the question was read.)

Mr. TUCKER: In order to refresh your memory, Mr. Haynes, will you be kind enough to look at the Court of Claims papers in this case that are here and state how much had been done in that case by Col. Moyers up to the time you became connected with it?

Mr. DONALDSON: Objected to, etc.

460 A. Yes, sir, I see the depositions that were taken in the case, the testimony, but the trouble with the case was, as I understood it, he did not have the evidence as he thought to sustain the case on loyalty.

Q. Well, was any further evidence taken after you became connected with it? A. No, sir, the case was—new briefs were filed in the case on loyalty after that.

Q. All that was done after you became connected with it was to file new briefs and argue the case orally in the Court of Claims, is that right? A. When I first became connected with it my connection was based upon the passage of this resolution referring the case to the Court of Claims under the Tucker Act. That was when I first became connected with it.

Q. Did you procure the passage of this resolution? A. I was instrumental in having it passed; yes, sir. I had some assistance.

Q. That is to say, you did what in connection with this passage? A. It was prepared.

Q. By whom? A. And introduced. I think I prepared it. I am not sure about that. Probably Mr. Carvalho introduced it and it was referred to the Committeee and then worked through that Committee and referred to the Court.

A. The case had been referred under the Bowman Act and this new resolution referred it under the Tucker Act, is that right?
461 A. Yes, sir, I believe that is right.

Q. Did you have to obtain a power of attorney or fee agreement from Mrs. Eaton before you went to Col. Moyers? A. I think we had correspondence on that; yes, sir.

Q. The question is had you obtained a power of attorney or fee agreement from Mrs. Eaton prior to your going to Col. Moyers?

Mr. DONALDSON: Objected to.

A. I had a power of attorney. I could not tell about the exact terms of the fee agreement without looking over the correspondence.

Q. Where is that power of attorney? A. It is on file in the case I presume.

Q. Will you be kind enough to look through those papers and find that power of attorney, indicating the Court of Claims papers. A. Yes, sir, I find the power of attorney here.

Q. What is the date of it? A. It is June 29th, 1903.

Q. That was after Col. Moyers' death, was it not? A. I believe it was; yes, sir.

Q. My question is whether you had any power of attorney from Mrs. Eaton in this Caldwell case prior to the death of Col. Moyers? A. No, sir, I believe no power of attorney. There was correspondence.

Q. The only thing you had was this letter from her which you took to Col. Moyers directing him to turn over the papers to
462 you in the case? A. Yes, sir.

Q. That is all you had? A. Yes, sir, I believe that is all.

Q. At that time, the time you went to Col. Moyers, or before you went to him did you examine the Court of Claims papers in this case? A. You mean in the court?

Q. In the court or in Col. Moyers' office, wherever they might be. A. We went over the papers together in his office.

Q. You went over the Court of Claims papers in his office? A. Yes, sir.

Q. Did you not find there a paper filed in the Court of Claims dated September 8th, 1887, entitled in the case and addressed to the Court of Claims and reading as follows: "I would like to have my time extended for filing the petition in this case to the 15th of September, 1887. George B. Edmonds, Attorney for Petitioner."

Mr. CONSAUL: Objected to.

A. No, sir, I saw nothing of that kind?

Q. It was not there? A. I do not know of its being there.

Q. Did you not also at that time find among the Court of Claims papers a power of attorney stamped "Filed, September 8th, 1887," from Lucy J. Eaton and Clifford Caldwell, daughter and son of the late Mrs. Lucy A. Caldwell, deceased, to George B. Edmonds of Washington, D. C., authorizing him to prosecute the claim of the late Mrs. Lucy A. Caldwell, deceased?

463 Mr. DONALDSON: Same objection.

A. No, sir, I saw no such paper there.

Q. Was it there? A. Not to my knowledge.

Q. Where did you examine these Court of Claims papers, in Col. Moyers' office or in the court? A. In Col. Moyers' office.

Q. He had the papers over in his office? A. He had like this, a bundle of papers there if I remember rightly.

Q. When you and he went over the papers you did not discover that George B. Edmonds had been formerly attorney of record in the case and had filed a power of attorney?

Mr. CONSAUL: Objected to.

A. I did not look for it, because my client said nothing about it. She just wrote me that Mr. Moyers had done some work in the case.

Q. Notwithstanding the order that you had from your client to procure these papers from Col. Moyers and yourself going on with the prosecution of the case, you were well satisfied enough with what Col. Moyers had done to associate yourself with him in the prosecution of the claim, or the future prosecution of the claim. Is that right?

Mr. CONSAUL: Objected to.

A. I thought he was working on it and wanted to give his time to it and finish up the brief, we better take it up together.

Q. Did he give you any reason why he was willing to associate you with him in the case and share with you the fee after all
464 the work he had done? A. Why I looked at it in this way—I don't think he had much feeling——

Q. I want the question answered; not what you think, but what he said. Read the question.

(Hereupon the question was read.)

Mr. CONSAUL: Objected to.

A. Can I answer what he said to me.

Q. Yes, sir, I asked you that. A. Well, if I remember rightly he told me that he got to a point where he could not do anything more in the case on account of that loyalty question and urged me—I would not say urged me to come in it, but seemed to want to have me take it up with him under this new resolution, this Tucker Act.

Q. Had that resolution been passed when you had called to see him? A. After it was passed I went to see him.

Q. Do you recall the date when you called to see him? A. No, sir, I don't recall the date.

Q. How long after you received this letter from Mrs. Eaton that you took to him, was it? A. I cannot recall that I am sure.

Q. Was the case referred under a Senate or a House resolution or bill? A. Senate resolution I believe.

Q. Are you sure that you went to see Col. Moyers about this case first in 1902? A. No, sir, I would not say that.

465 Q. Have you any way of refreshing your recollection and telling us when you did go? A. No, sir, I don't think I went, of course, until after I heard from Mrs. Eaton. I don't

recollect the date of her letter. Probably about the time the resolution went through. Something about that time. I think that was 1903.

Q. I want to get that date and I hate to ask you to come back again. I want to find out about that. A. I think there is something here showing when I was associated as attorney with him. I think there was something filed.

Mr. DONALDSON: This line of examination, including the last question, is objected to.

Mr. TUCKER: Read the question and let us get an answer responsive to the question.

(Hereupon the question was read.)

A. Well, my impression is it was along early in 1903. I find a request to enter my appearance as counsel with him, filed April 10th. It was not far from that date I imagine. There was a verbal conference and I don't know as I can give the exact date of it.

Q. Prior to that time had not Col. Moyers had correspondence with Benjamin F. Caldwell with reference to a new reference of this case to the Court of Claims? A. I don't know about that.

Mr. CONSAUL: Objected to.

A. It is possible because Mr. Caldwell was a member of Congress and for some time was trying to have this case referred to the Court of Claims.

466 Q. When you had your first conference with Col. Moyers about this case, did he tell you of the claim of the administrator of George B. Edmonds to a share of the fee? A. No, sir.

Q. Said nothing to you about it? A. No, sir, nothing whatever. I knew nothing about that.

Q. Did he tell you that this case in which we are now taking this testimony was then pending and he was claiming expenses—claiming a credit for expenses in that case that he had incurred in the prosecution of that case against the estate of Edmonds? A. No, sir, I never had any talk with him that brought up anything about Mr. Edmonds.

Mr. CONSAUL: Objected to.

Q. Now, Col. Moyers it appears died on the 13th of June, 1903, and this power of attorney from Mrs. Eaton to Mr. Consaul, Miss Moyers and yourself appears to be dated on the 29th of June, sixteen days after Col. Moyers' death. Did you write to Mrs. Eaton for this power of attorney? A. I believe I did.

Q. Can you produce a copy of your letter to her? A. It is possible. If I can I will.

Q. At the time of Col. Moyers' death Mr. Consaul and Miss Moyers, as his office associates, had full custody and control of all of the papers in this Caldwell case, did they not?

Mr. DONALDSON: Objected to.

A. Mr. Cousaul had the papers and we went over them and discussed them, etc.

467 Q. Did you participate in the preparation of the brief that was used in the Court of Claims or in the oral argument in the Court of Claims?

Mr. DONALDSON: Objected to.

A. Only in the way of consultations as far as the briefs were concerned. We went over them together several times. I think we had several talks over them at least.

Q. What was the total amount of the fee in the case, Mr. Haynes? A. I think it was two thousand dollars and something then from that—some costs that Mrs. Eaton had advanced that were taken out of the fee.

Q. What was done about the expenses in the distribution of the proceeds of the warrant or check settling the claim? What was done about the matter of the expenses that had been incurred at this end of the line in the prosecution of the case and of the Court of Claims expenses?

Mr. CONSAUL: Objected to.

A. I don't know.

Q. You only know that you got $750.00 as your share of the fee? A. The expenses incurred by Mrs. Eaton were for attorneys taking depositions, etc.

Q. And those expenses you say you remitted to Mrs. Eaton? A. Yes, sir.

Q. And reserving for yourself the $750.00? A. Yes, sir.

Hereupon an adjournment was taken until Tuesday May 22nd, 1906, to meet at the same place at 1.30 o'clock P. M.

468 CUMMINGS
vs.
CONSAUL.

MONDAY, *November* 5, 1906—1:30 p. m.

Hearing pursuant to notice.
Present Messrs. Tucker and Donaldson.

Miss IDA M. MOYERS having been sworn testified as follows:—

By Mr. DONALDSON:

Q. Miss Moyers, you are the daughter of the late Gilbert Moyers? A. I am.

Q. What connection if any have you with the firm of Moyers and Consaul? A. I am one of the members of said firm.

Q. I hand you a paper dated Soldiers' Home, Virginia, December 17, 1889, addressed to Gilbert Moyers, Esq., signed by George B. Edmunds and ask you if you know anything about that paper with respect to how it comes here to day? A. Yes, that paper is

a letter I found among a lot of old papers removed from the cellar of my residence after my father's death?

Q. When you speak of your residence, was that the residence of your father during his life time? A. Yes.

Q. This letter was found among your father's papers? A. These were all papers relating to my father's affairs and business and of course his papers.

Mr. DONALDSON: I offer this letter in evidence in this
469 cause and ask the Auditor permission to leave here to day a compared copy of it reserving in our possession the original to be produced at any time when desired, this paper to be marked I. M. M. No. 1.

Mr. TUCKER: I admit that the letter offered in evidence is in the hand-writing of George B. Edmunds, deceased, but I object to the admissibility of the letter in evidence on the ground that it is utterly irrelevant and immaterial to any issue involved in this reference and upon the further ground that the Court has heretofore in a- effort made by the defendants to inject this letter in question in this case, declined to allow the testimony to be reopened for the purpose of introducing this letter in evidence.

The AUDITOR: The paper will be filed as a matter of course as all papers offered in evidence are, but I will have to say now that I do not consider it relevant or material to the issue in this reference.

Q. There is one question I neglected to ask you and that is, whether when you found this letter among your father's papers if you looked over all the papers that were left in the cellar of your house. A. No, I did not.

Q. About how many papers remain, generally, and how long would it take you to go through them? A. Well, I could hardly say as to the number of papers remaining, but judging from the bulk it would take me a solid month's work to look over them thoroughly. I have made a casual examination of the face of each paper. I may add that the casual examination was made for the express purpose of finding the list mentioned in the letter and I examined all the papers thoroughly that I thought could
470 possibly be a list of cases and did not find it.

Adjourned for argument to Saturday November 17, 1906 at 10:30 o'clock, A. M.

CUMMINGS
vs.
CONSAUL.

THURSDAY, *December* 13, 1906—10:15 o'clock a. m.

Hearing pursuant to notice.
Present Messrs. Tucker, Donaldson and Consaul.

RALPH W. HAYNES having been sworn testified as follows:—

By Mr. CONSAUL:

Q. Are you the same Ralph W. Haynes who has previously testified in this case? A. Yes.

Q. Referring to your previous testimony and to the request of Mr. Tucker attorney for the Complainant, that you produce if possible your letter written to Mrs. Lucy J. Eaton executrix of *the* Lucy A. Caldwell during the life time of Gilbert Moyers for a power of attorney, please state whether or not you have found your said letter in your files or any office copy thereof? A. I have examined my files — which I keep my correspondence and I have not been able to find such a letter. I believe I told Miss Moyers that I could not find it and she left a little memorandum cover-
471 ing certain dates and I looked again and could not find it and then I wrote to Mrs. Eaton and asked if she had the letter or a copy of it, to let me have it. Those dates were between June 13, and July 3, 1903.

Q. When or about when did you write Mrs. Eaton requesting her to send you such letter or copy thereof? A. I wrote her on November 22, last.

Q. Referring again to your previous testimony, record page 160, and the request of Mr. Tucker that you produce if possible any order given to you by Mrs. Eaton upon Gilbert Moyers requesting him to deliver to you the papers in the claim of the estate of Lucy A. Caldwell, please state whether or not you now have such an order in your possession. A. I have nothing in my possession.

By Mr. DONALDSON:

Q. Please state whether or not that is the order? (handing the witness a paper.) A. Yes, this is the order I received from Mrs. Eaton.

Q. Referring to the date thereon, can you state about when you received that order from Mrs. Eaton? A. I presume about this date, it was along the first of the case.

Q. What is the date? A. March 10, 1903.

Mr. CONSAUL: I offer this order in evidence, from Mrs. Lucy J. Eaton addressed to Mr. Gilbert Moyers dated March 10, 1903, and produced in response to the call of counsel for the complainant.

472 Q. Please examine this letter purporting to have been written March 10, 1903, addressed to you, signed by Mrs.

Lucy J. Eaton, state if you recognize that letter? A. Yes, I received this letter from Mrs. Eaton about that date.

Q. Can you state whether or not it enclosed the order above mentioned? A. I believe it did.

Q. Please examine this carbon copy of what purports to be a letter written by you March 13, 1903, to Mrs. Lucy J. Eaton and state if your recognize same? A. That is a carbon of my reply to her letter of the 10th.

Q. State whether or not this bunch of papers including those just above mentioned constitute your office files of your correspondence with Mrs. Eaton relative to the Lucy A. Caldwell claim? A. I guess that is about all there are.

By Mr. DONALDSON:

Q. Included among this bunch of papers are what purports to be carbon copies of letters written by you to Mrs. Eaton, can you state whether you wrote those originals of which these purport to be copies and sent the originals to her? A. Yes.

Q. These are all the letters which you now have which passed between you and Mrs. Eaton from the time you came into the case?

Mr. TUCKER: I object as leading and suggestive.

Q. Have you failed to produce among this correspondence any letter which you wrote or received from Mrs. Eaton, so far as
473 you know? A. I don't know that I have any more.

Q. Among these papers is a letter written to you by Mrs. Eaton dated England Arkansas, May 18, 1903, it begins by saying "Yours of the 13th received and contents noted," among these papers which you say constitute your office files of correspondence in this claim there does not appear any carbon copy of a letter sent by you to Mrs. Eaton on May 13th I will ask you whether you now have such a carbon copy? A. Unless it is there I haven't.

Mr. DONALDSON: We offer in evidence this correspondence and *that* that it be copied into the record and the originals preserved.

Mr. TUCKER: I object to the documents and copies being offered in evidence except the order which the witness was called upon to produce and the letter enclosing the same, on the ground that such other documents and copies are wholly irrelevant and immaterial and are in no wise binding upon the complainant as the representative of the surviving partner in the absence of a showing that he had any knowledge of such correspondence, and upon the further ground that the correspondence offered is by the witness' own testimony incomplete, not including copies of letters written by him according to his own testimony.

The AUDITOR: The ruling will be reserved and the papers will be filed.

Cross-examination by Mr. TUCKER:

Q. Do you remember what you said in your letter to this lady in which you asked her to sign the power of attorney or fee

474 agreement or both, copy of which letter is not produced? A. I don't remember, simply I called for a power of attorney, it was after Gilbert Moyers' death.

Q. She sent you a power made out to you Mr. Consaul and Miss Moyers, did she not? A. I expect that is about it.

Q. What I want to get at is what you said in the letter in which you asked for this power of attorney with reference to Mr. Consaul or Miss Moyers connection with the case, how did you explain their connection with the case? A. I can't say just what I said on that point, I might just have asked for the power of attorney.

Q. You cannot recall it. A. No.

Q. She also sent you a fee agreement running to you Mr. Consaul and Miss Moyers? A. I believe so, yes. I have written her a letter asking for this letter and could not get a reply.

CHARLES C. CONSAUL is recalled.

Referring to my previous testimony relative to the correspondence in the case of the claim of Lucy A. Caldwell I testified that I was not positive whether or not my firm of Moyers and Consaul wrote directly to Mrs. Lucy J. Eaton the executrix for the purpose of securing a power of attorney after the death of Gilbert Moyers, but I agreed in response to a request of Mr. Tucker to produce a copy of such letter if I found one and since previously testifying I have carefully examined our office dockets and files and find that
475 he had no direct correspondence with Mrs. Eaton relative to our being employed in the prosecution of that claim. The matter of the employment of our firm was entirely conducted by Mr. Ralph W. Haynes who controlled the case.

Referring to two of the cases embraced within this pending litigation I have found two letters, one dated July 7, 1902, and one dated July 14, 1902, addressed to Gilbert Moyers and signed by Charles Cowles Tucker and H. F. Woodward as receivers in this case.

Mr. TUCKER: I object to any statement of the contents of the letters.

Mr. CONSAUL: Which I offer in evidence as explanatory of the manner in which the two local attorneys' fees mentioned in said letters were paid.

Mr. TUCKER: I object to these letters as utterly immaterial and irrelevant as throwing no light whatever upon the issues in this reference, as not in any wise binding upon the complainant but relating merely to the administration by the receivers.

The AUDITOR: The ruling is reserved.

Mr. CONSAUL: Since the previous hearing in this case the defendants have made a tender to the complainant through his attorney Mr. Tucker of an offer of settlement of this case.

Mr. TUCKER: I object to the statement of the witness as purely and utterly irrelevant and immaterial and as having no bearing upon the issues in this reference and as an wholly improper effort to impart into this record an alleged offer of compromise.

The AUDITOR: The objection is sustained as entirely irrelevant to the issues made up by the order of reference. Proof is closed on the part of the defendants.

476 NATIONAL SOLDIERS' HOME, VA., *Dec.* 17, 1889.

Gilbert Moyers, Esq.

SIR: Today I will send you a list of my cases, and the number of the cases set down on the margin. Last winter I sent every case to Gen. Stone, except five or eight cases in Gen. Lee's district and one Peter Clark in another Virginia District, and I expected they would all be sent down by Gen. Stone committees but for some reason they were not sent down as I understood him they would be last winter, and the same the year before.

Some of these cases have other attorneys in them, but I did not know it at the time I took the cases, and I think there was no other attorney at the time I took them.

Now if the order of the Court amounts to anything, they could not discharged me without paying me, and I desire every — tested, and if they will pay me, then they can hire other attorneys. One case is the Febrey case, another case is Loftus Allen. In this last case my power of attorney was executed first. Mr. Dye filed his power of attorney before I did mine but my power of attorney was executed before his was. I had filed in Congress to have the case sent to the Court of Claims. I filed with the Clerk my power of attorney and he marked my name down as attorney, but I see my name is scratched out, by whom I do not know.

I enclose a letter from a Mr. Bell, and I think it is the same name down on the list I send you.

Very respectfully, GEO. B. EDMONDS.

(Endorsed G. B. Edmonds, Dec. 17, '89.)

477 EXHIBIT H. S. C. No. 1.

Filed December 21, 1906.

May 7, 1887. 2028.

LUCY A. CALDWELL
v.
THE UNITED STATES.

Order Com. on War Claims H. R. dated Feb. 28, 1887, referring case and eight papers filed. Notified A. A. G. and claimant at Plum Bayou, Jefferson Co. Ark.

June 24, 1887. Appearance filed.
Sept. 8, 1887. Power of Attorney filed.
Sept. 8, 1887. Record of Appt. as admr. filed. Motion to extend time for filing petition allowed filed.
Sept. 8, 1887. Petition filed. Defts. notified.
Sept. 12, 1887. Notice of intention to use evidence filed. Defts. notified.

Oct. 31, 1887. Traverse filed.
Feb. 25, 1891. Call on War Dept. (C. A.) issued (Petition sent).
Mar. 10, 1891. Call on War Dept. (C. A.) returned with answer endorsed thereon. Filed. Parties notified.
Sept. 29, 1891. Call on Treasury Dept. issued.
Apr. 21, 1892. Reply of Treasury Dept. received. Parties notified.
Oct. 18, 1892. Report of War Dept. filed by defts. Parties notified.
Feby. 15, 1895. Depositions of Sterling H. Lucker and others for claimant filed. Parties notified.
March 1, 1895. Claimant's brief on loyalty filed. Defts. notified.
July 6, 1895. Def'ts' notice to clmts. for taking testimony filed. Copy to attorney.
Aug. 10, 1895. Deposition of Stephen David, *et al.*, for defts. filed, parties notified.
Jan. 26, 1898. Report of War Dept. on clmt's loyalty, filed by defts. Attorney notified.
June 21, 1898. Three notices of defts. to take testimony filed. Copies to clmt's atty. mailed.
Aug. 3, 1898. Deposition of Daniel Brown, Ben Maten, Mathilda Wells, and John Thomas for defts. Parties notified.
Aug. 3, 1898. Depositions of Stephen Swaney and Mrs. Lena N. Donaldson for defts. filed. Parties notified.
Aug. 4, 1898. Deposition of Hick Currie and J. K. Brodie for defts. filed. Parties notified.
Sept. 1, 1898. Evidence for clmts. (certification of exemption from military service) filed defendants notified.
Sept. 20, 1898. Certificate of County Court of Pulaski Co., Ark., filed for defts. Attorney notified.
Nov. 18, 1898. Stipulation to take testimony of Hon. Powell Clayton, filed by defts. with interrogatories attached.
December 7, 1898. Def'ts' motion for special commission to issue to Andrew D. Barrow, U. S. Consul General at the City of Mexico to take testimony of Hon. Powell Clayton filed. Allowed.

478

Dec. 7, 1898. Special Commission with interrogatories and cross-interrogatories annexed transmitted to Andrew D. Barlow, U. S. Consul General at the City of Mexico through the State Dept.
Dec. 29, 1898. Testimony of Hon. Powell Clayton, returned by U. S. Consul General Barlow filed. Parties notified.

Apr. 11, 1899. Def'ts' brief on loyalty with accompanying abstract of evidence filed. Attorney notified. (Kincholoe.)
May 10, 1899. Clmt.'s notice to take testimony filed. Copy and notice to Defts.
June 24, 1899. Deposition of Rufus G. Caldwell for clmt. filed. Parties notified.
July 22, 1899. Dep. of Anna E. Core for clmt. filed; parties notified.
July 26, 1899. Stipulation to take testimony filed.
Sept. 19, 1899. Motion to exclude testimony and brief thereon filed by defts. Handed judges. Attorney notified. To Law Calendar.
Nov. 20, 1900. Remanded to General docket.
Sept. 9, 1901. Claimant's reply to Def'ts' motion to exclude testimony with accompanying affidavits of Gen. L. Du Val, Henry Connelly, and W. B. Brown, for clmt. filed. Copy of brief and notice to defts.
Sept. 9, 1901. Clmt.'s suppl. brief on loyalty filed. Copy and notice to defts.
Dec. 16, 1901. Motion of defts. to exclude testimony filed Sept. 9, 1899, withdrawn by defts. in open court.
Oct. 30, 1902. Def'ts' suppl. brief on loyalty filed. Attorney notified. (Kincheloe.)
Mar. 16, 1903. Report of War Dept. on loyalty filed by defts. Atty. notified.
Apr. 2, 1903. Motion to transfer all papers in this case to 11146. All entries are to be made in 11146.

11146.

EST. OF LUCY A. CALDWELL
v.
THE UNITED STATES.

MAR. 12, 1903.

See case 11077 for resolution of U. S. Senate dated March 2, 1903, referring case under Act Mar. 3, 1887, with Senate Bill 6940 filed, amount claim $6,750. Notified A. A. G., clmt.'s address Jefferson Co., Ark.

Mar. 24, 1903. Appearance of Gilbert Moyers as Attorney of Record, filed. Defts. notified.
Apr. 2, 1903. Motion to consolidate and transfer papers in case 2028 to this case filed. Allowed under Rule 73. Defts. notified.
Apr. 10, 1903. Request of atty. of record to enter R. W. Haynes as of counsel filed.

479

May 7, 1903. Report of War Dept. on clmt's loyalty filed by defts. Attorney notified.
May 20, 1903. Report of Treasury Dept. on loyalty filed by defts. Attorney notified.
May 22, 1903. Clmt.'s request for findings of fact and brief on merits filed. Copy and notice to defts.
May 23, 1903. Clmt.'s reply to def'ts' brief on loyalty filed. Copy and notice to defts.
July 6, 1903. Motion of Lucy J. Eaton to be substituted as Executrix with accompanying original letters testamentary and certificate as to surviving executrix filed. Allowed under Rule 35, new, Ed. 1903, copy and notice to defts.
July 6, 1903. Motion to substitute Moyers & Consaul as attorneys of record with power of attorney filed. Allowed.
July 20, 1903. Clmt.'s substitute brief on loyalty.
Sept. 25, 1903. Petition filed. Copies and notice to defts.
Oct. 20, 1903. Report of War Dept. filed by defts. Attorney notified.
Nov. 6, 1903. Def'ts' brief on loyalty and merits and abstract of testimony filed. Atty. notified.
Mar. 1, 1904. Argued and submitted on loyalty and merits.
Mar. 14, 1904. Court filed findings of fact in favor of clmt. for the sum of $4,250.00 to be certified to President *pro tem.* U. S. Senate.
Mar. 24, 1904. Motion to send up findings of fact. Defts. consenting. Allowed.
Mar. 24, 1904. Findings certified to President *pro tem.* U. S. Senate.

480 EXHIBIT H. S. C. No. 2.

Feby. 16, 1889. 6847.

JANE EDGE
vs.
THE UNITED STATES.

Order Com. War Claims H. R. dated Feby. 15, 1889, referring case and one paper filed.

Feb. 21, 1889. Appearance filed by Moyers & Edmonds.
Aug. 24, 1889. Call on Clerk H. R. issued.
Sept. 3, " Reply Clerk H. R. (6) filed. Parties notified.
Aug. 5, 1890. Call on War Dept. (C. A.) issued.
Aug. 19, " Call on War Dept. (C. A.) returned with endorsement. Filed, parties notified.
Oct. 6, 1892. Report of War and Treasury Department- filed by defendants. Parties notified.
Sept. 4, 1900. Claimant's notice to take testimony filed. Copy to defendants.

Oct.	15, 1900.	Clmt.'s notice to take testimony filed. Copy to defts.
Nov.	19, 1900.	Deposition of Hiram Reeves for clmt. filed. Parties notified.
Feby.	7, 1901.	Clmt.'s brief on loyalty filed; copy & notice to defts.
May	23, 1901.	Report of War Dept. on clmt.'s loyalty filed, parties notified.
July	20, 1901.	Def'ts' notice to take testimony filed. Copy mailed to clmt.'s atty.
July	29, 1901.	Deposition of Jackson D. Edge for clmt. filed, parties notified.
Aug.	19, 1901.	Deposition of John Edge for defts. filed, parties notified.
Aug.	27, 1901.	Clmt.'s suppl. brief on loyalty filed; copy & notice to defts.
December	4, 1901.	Def'ts' brief on loyalty & suppl. on loyalty filed. Atty. notified (Chisholm).
April	29, 1902.	Clmt.'s reply to def'ts' brief on loyalty filed. Copy & notice to defts.
May	13, 1902.	Submitted on loyalty.
May	19, 1902.	Loyalty of Jane Edge, dec'd, found.
Aug.	29, 1902.	Motion to substitute J. D. Edge, Admr. of the estate of Jane Edge, dec'd. with accompanying certified copy of the letters of administration filed. Allowed under Rule- 26 & 73.
Aug.	29, 1902.	Motion to substitute I. M. Moyers and Charles F. Consaul attorneys in the place of Gilbert Moyers, the former attorney filed with accompanying appearance and power of attorney filed, Gilbert Moyers consenting; sent to Chief Justice. Defts. notified allowed.
Sept.	4, 1902.	Motion of August 29, 1902, amended. Allowed.
Sept.	8, 1902.	Petition filed. Copies & notice to defts.
Sept.	8, 1902.	Clmt.'s request for findings of fact & brief on merits filed. Copy & notice to Defts.
Sept.	25, 1902.	Report of War Dept. filed by defts. Attorneys notified.
Nov.	21, 1902.	Def'ts' brief on merits filed. Attorneys notified.
481		
Nov.	25, 1902.	Clmt.'s reply brief on merits filed. Copy & notice to defts.
Nov.	28, 1902.	Report of Treasury Dept. on loyalty and merits filed. Attorneys notified.
Dec.	1, 1902.	Submitted on evidence & brief.
Jany.	5, 1903.	Court filed findings of fact for $817.00 to be certified to speaker H. R.
Jan.	13, 1903.	Motion to send up findings filed. Defendants consenting, allowed.
Jan.	14, 1903.	Findings certified to Speaker, H. R.

482 EXHIBIT H. S. C. No. 3.

May 17, 1888. 4499.

HERBERT SMITH
vs.
UNITED STATES.

Order Committee war claims H. R. dated May 4, 1888, referring case and four papers filed. Notified A. A. G. and claimants care Clerk Marlboro Co., S. C.

June	2, 1888.	Appearance and Power of Attorney filed.
June	11, 1890.	Reply War Dept. (C. A.) filed. Attorneys notified.
Nov.	19, 1892.	Report of War Dept. filed by defnts. Atty. notified.
Nov.	29, 1892.	Report of War Dept. filed by defnts. Atty. notified.
Apr.	16, 1895.	Notice to defnts. for taking testimony by deposition on oral examination filed. Copy to defnts.
Sept.	29, 1900.	Compl't's notice to take tstmy. filed. Copy to defnts.
Nov.	23, 1900.	Depsn. of Capt. A. E. Bristow, Miles Smith and Leah Smith for cmplnt. filed. Attys. notified.
July	24, 1901.	Clmnt.'s brief on loyalty. Copy & notice to defnts.
Sept.	30, 1901.	Defnts.' brief on loyalty filed. Atty. notfd. (Collins.)
Oct.	3, 1901.	Clamt.'s reply to defnts.' brief filed. Copy & nts. to dfts.
Oct.	14, 1901.	Dfnts.' supplemental brief on loyalty filed. Parties notified (Collins.)
Oct.	23, 1901.	Clmnt.'s reply to defnts.' brief on loyalty filed. Copy and notice to defnts.
June	4, 1902.	Continued.
Janu.	14, 1903.	Motion to withdraw briefs filed. Handed Judges Defnts. consenting. Allowed.
Febry.	12, 1903.	Clmnt.'s reply brief on loyalty filed. Copy & Nts. to defts.
Mar.	9, 1903.	Submitted on loyalty.
Mar.	16, 1903.	Loyalty of Herbert Smith found.
May	23, 1903.	Motion to substitute Mrs. Sallie J. Adams as adm'trix. Copies of ltrs. of admstrn. fld. Allowed under rules 26 and 73. Defnts. notified.
May	23, 1903.	Petition fld. Copy & Nts. to defnts.

May 23, 1903. Power of Atty. and clmnt.'s request for fnds. of fact and brief on merits filed. Copy & Nts. to defnts.

May 23, 1903. Motion to substitute parties filed. Former atty. consenting. Handed Jdg. Allwd. June 5, 1903.

July 31, 1903. Defnts.' brief on merts. fld. Atty. notfd. (Collins.)

Aug. 11, 1903. Clamnt.'s reply brief on mrts. fld. Copy & Nts. to defnts.

Sept. 11, 1903. Report of War & Treas. Depts. on lylty. and mrts. fld. by defnts. Atty. notified.

Nov. 16, 1903. Submitted on evdnce. and briefs.

483

Dec. 7, 1903. Court fild. findings of fct. for sum of $1826 to be certfd. to Speaker H. R.

Dec. 22, 1903. Motion to send up fndgs. fild. Defnts. consntg. allowd.

Dec. 22, 1903. Findings certifd. to the Speaker H. R.

Charles F. Consaul, Attorney of Record.
J. M. Moyer, of counsel.

484 Law Offices of Davis and Tucker, Jenifer Building, 7th & D Sts. N. W.

WASHINGTON, D. C., *July* 7, 1902.

Gilbert Moyers, Esquire, 720 17th Street, N. W., City.

DEAR SIR: As receivers in the case of Cummings, Administrator, *vs.* Moyers, Equity No. 20802, we ask that you furnish us at once with a copy of your contract, if you had one, with W. A. Montgomery, of Edwards, Miss., in the matter of the claim of the estate of the late Thomas Kidd, of Miss., against the Government, for the settlement of which claim the sum of $13,460 was appropriated by the act of Congress of May 27th, 1902. If you find that you have not a copy of the contract, please furnish us with copies of any letters that you may have written to or received from W. A. Montgomery relating to the subject of his compensation as local attorney.

It is our desire to settle the claim of Mr. Montgomery as soon as possible, but we cannot do so until it shall be made clear to us, or to the Court, what portion of the fee he is entitled to.

Requesting that you give this matter your immediate attention, we are,

Yours very truly,

CHAS. COWLES TUCKER,
HENRY F. WOODARD, *Receivers.*

485 Law Offices of Davis and Tucker, Jenifer Building, 7th & D Sts., N. W.

WASHINGTON, D. C., *July* 14, 1902.

Gilbert Moyers, Esq., 17th St., N. W., City.

DEAR SIR: In the matter of the claim of Nancy H. and Rebecca H. Beans against the Government, which was appropriated for by the act of May 27th, 1902, we, as receivers in Cummings *v.* Moyers, have been informed by Mr. O. I. Thomas, of Bluemont, Virginia, that he is entitled to one-half of the 50% fee agreed to be paid by the said executrices; and he has submitted to us a copy of an agreement, dated December 7, 1895, whereby said executrices employed you and him as their attorneys and agreed to pay a 50% fee, and a copy of an agreement, dated December 4th, 1895, between you and him whereby it is agreed that said fee shall be equally divided between you.

We do not desire, as receivers, to make a settlement with Mr. Thomas until you shall have verified his statement that he is entitled to one-half of the fee.

Kindly advise us at once whether this is so.

Very truly yours,

CHAS. COWLES TUCKER,
HENRY F. WOODARD,
Receivers, Equity No. 20802.

486 Mr. Gilbert Moyers:—

Please turn over to Mr. R. W. Haynes, all papers you have relating to the claim of Mrs. Lucy A. Caldwell, including the Pow. of Atty. I gave you, and oblige,

Yours Respt., MRS. LUCY J. EATON.

Mar. 10th, 1903.

487 ENGLAND, ARK., *Mar. 10th*, 1903.

Mr. R. W. Haynes, Washington, D. C.

DEAR SIR: Yours of the 5th received last P. M., and contents noted. I shall be pleased to have you take the case in hand at once, and push it to trial. What interest in the claim will you undertake the case? In the beginning my mother offered one-half interest in the claim, the atty. paying all expenses. I have been tho- at considerable expense, which Mr. Moyers promised to refund when claim was collected. I will inclose you an order to Mr. Moyers for all the papers from 1872 to the present time and trust you will have no trouble in making satisfactory arrangement with him. Any information I can give please let me know. Wishing you success in the undertaking, I am,

Yours Respectfully, MRS. L. J. EATON,
England, Ark.

488 MARCH 13, 1903.

Mrs. L. J. Eaton, England, Ark.

DEAR MADAM: I have your favor of the 10th instant enclosing order on Mr. Gilbert Moyers to deliver papers in the Mrs. Lucy A. Caldwell case, to me.

The files in this case have not yet reached the Court of Claims, and when received, the case will be immediately taken up in that Court.

Yours very truly, R. W. HAYNES.

489 ENGLAND, ARK., *May* 4, 1903.

Mr. R. W. Haynes, Washington, D. C.

DEAR SIR: Just a line to ask if you are using every effort to get the Lucy A. Caldwell claim before the Court of Claims. Would be pleased to know what is being done in the case. In haste I am,

Yours Respt., MRS. L. J. EATON,
England, Ark.

490 ENGLAND, ARK., *May* 18, 1903.

Mr. R. W. Haynes, Washington, D. C.

DEAR SIR: Yours of 13th received and contents noted. I feel very sure I sent a copy of Letters Testamentary in 1878 or 1879 to Mr. Moyers. It has been so long since I suppose he has forgotten it. My mother at her death left her three children her executors, myself, Lucy J. Eaton, my sister, Fanny T. Thomas and my bro., Clifford Caldwell. Mrs. Thomas and Clifford are dead. I alone survive. I inclose you a copy of one of the Letters Testamentary, and trust it will be sufficient. Trusting to hear from you when anything to communicate, I am,

Yours Respt., MRS. LUCY J. EATON,
England, Ark.

491 JULY 3RD, 1903.

Mrs. L. J. Eaton, England, Ark.

DEAR MADAM: I am this day in receipt of your letter including the following papers in the Lucy Ann Caldwell case against the United States. First—statement of clerk of Jefferson County, Ark. that Lucy Jane Eaton is the duly appointed, qualified and acting executrix of the last will and testament of Lucy Ann Caldwell—deceased. Second—power of attorney from Mrs. Lucy Jane Eaton of Lonoke County, Ark., surviving executrix of the estate of Lucy Ann Caldwell, deceased, constituting Moyers & Consaul and R. W. Haynes, of Washington, D. C., her attorneys to prosecute the claim of Lucy Ann Caldwell against the United States.

Yours very truly, R. W. HAYNES.

492 ENGLAND, ARK., *Oct.* 21, 1903.

Mr. R. W. Haynes, Washington, D. C.

DEAR SIR: Just a line to ask if the Lucy A. Caldwell claim has come up before the Court yet. I am anxiously expecting to hear from you.

Yours Respt., MRS. LUCY J. EATON,
England, Ark.

493 NOVEMBER 14, 1903.

Mrs. L. J. Eaton, England, Ark.

DEAR MADAM: I am in receipt of your letter of the 20th ult. asking for information relative to the Lucy A. Caldwell claim now before the Court of Claims. The final brief of the Government was filed this last week and the case of the Government is presented with great force by the Assistant Attorney General. Upon the question of loyalty, the Government does make a pretty strong defense and as the Court is now holding in this class of cases that loyalty must be shown, the attorney representing your side of the case is now considering whether we will submit the case on the printed brief already in, or make an oral argument in addition thereto. We shall probably determine just what course to pursue within the next ten days. If we submit the case to the Court on the briefs now in we will get an early decision one way or the other, but if we have the case set down for oral argument the case will have to take its course and an early decision can not be expected as the docket is behind on hearings of this character. Mr. Caldwell who is attending the special session of Congress has already been in and knows just how the case stands, and is taking an active interest in your behalf.

Yours very truly, R. W. HAYNES.

494 ENGLAND, ARK., *April* 3/05.

Mr. R. W. Haynes, Washington, D. C.

DEAR SIR: Yours of the 27th received and contents noted. Inclosed you will find the Postals, one from Moyers & Consaul, the other showing the names of six depositions taken in Little Rock in 1895, each one cost me five dollars.

If you need any more papers draw them up. I will sign them, but the att'ys must pay the expenses. I also send you the receipt of Mess. White and Altheimer, which with the Postals I wish returned to me. I don't see why there should be any hitch when I have done all the law required. All I want is my half and expenses I have paid out of my pocket. Trusting I will hear from you at once, I am,

Yours Resp't, MRS. LUCY J. EATON,
England, Ark.

495 ENGLAND, ARK., *May 25th*, /05.

Mr. R. W. Haynes, Washington, D. C.

DEAR SIR: Yours of the 19th just received with inclosed draft on New York for $2275. which I assure you is more than satisfactory.

Please accept my warmest thanks for your efforts in my behalf. I feel without your and my relative Congressman Caldwell's efforts in my interest I never would have won the case. Do accept many thanks and my best wishes. I am

Sincerely yours, MRS. LUCY J. EATON.

496 *Stipulation as to Intervenor's Evidence.*

Filed December 24, 1906.

In the Supreme Court of the District of Columbia.

Equity. No. 20802.

HORACE S. CUMMINGS, Administrator of Estate of George B. Edmonds, Dec'd, Complainant,

vs.

CHARLES F. CONSAUL and IDA M. MOYERS, Administrators of Estate of Gilbert Moyers, Deceased, Defendants, and GEORGE M. BARBER, Intervenor.

The depositions heretofore taken herein by George M. Barber, intervenor, in support of his claim, mentioned and set out in his intervening petition, having been lost, it is hereby stipulated by and between the parties hereto that the following is the substance and effect of said depositions:

They comprised the testimony of the petitioner George M. Barber, and three other witnesses and showed that Gilbert Moyers, deceased, wrote to the said Barber, and the latter received, the letters, extracts of which are set forth in the said intervening petition, and several other letters of like import in which said Gilbert Moyers urged said Barber to procure and take the testimony of witnesses in sup-
497 port of the claim of the estate of Thomas Kidd against the United States; that after the receipt of said letters by said Barber, he secured the attendance of at least seven witnesses and acted as attorney in taking their depositions in support of said claim against the United States, which depositions were thereupon forwarded to and filed in the Court of Claims at Washington, D. C., on or about January 6, 1890.

Signed this 24th day of December, 1906.

COLE & DONALDSON,
Solicitor for Defendants.
TUCKER & KENYON,
Solicitor for Complainant.
J. ALTHEUS JOHNSON,
Solicitor for Intervenor.

Decree Directing Settlement of Barber Claim.

Filed December 26, 1906.

In the Supreme Court of the District of Columbia.

Equity. No. 20802.

HORACE S. CUMMINGS, Administrator — George B. Edmonds, Deceased, Complainant,

vs.

CHARLES F. CONSAUL and IDA M. MOYERS, Administrators, Defendants.

The matter of the intervening petition of George M. Barber, having come on to be heard at this term of the Court, it is this 26th day of December, A. D., 1906, ordered, adjudged and decreed as
498 follows, to wit:

1. That the intervenor, George M. Barber, is entitled to the sum of Two hundred and one dollars and ninety cents ($201.90) in full payment for his services in the matter of the claim of the estate of Thomas Kidd against the United States.

2. That the receivers in this cause are hereby directed to forthwith pay to the said George M. Barber, or his solicitors of record, in full discharge of his said claim, the sum of Two hundred and one dollars and ninety cents ($201.90), out of the moneys now in their hands, for the payment of which sum said receivers shall be given credit therefor in any accounting to this Court.

3. That the Auditor of this Court be, and he hereby is directed to ascertain and report forthwith upon the petition of said George M. Barber and the answers thereto of the complainant and of Gilbert Moyers, the deceased defendant, and upon the stipulation this day filed as to the substance and effect of the depositions (which have been mislaid or lost) taken by said Barber in support of his said petition, whether said payment of $201.90 is chargeable against the partnership between George B. Edmonds, deceased and Gilbert Moyers, deceased, or against the defendants, alone, as administrators of the estate of said Gilbert Moyers, deceased, and to further ascertain and report how the $682 reserved from distribution pending the determination of said claim of said Barber, or the balance thereof remaining after the payment of said claim as hereinbefore di-
499 rected, shall be distributed as between the complainant and the defendants.

HARRY M. CLABAUGH,
Chief Justice.

We consent:

TUCKER & KENYON,
Solicitors for Complainant.

COLE & DONALDSON,
Solicitors for Defendants.

J. ALTHEUS JOHNSON,
FRED BEALL,
Solicitors for Intervening Petitioner.

Exceptions of Defendants to Report of Auditor of Dec. 21, 1906.

Filed January 3, 1907.

In the Supreme Court of the District of Columbia.

Equity. No. 20802.

HORACE S. CUMMINGS, Administrator of George B. Edmonds, Deceased, Complainant,
vs.
CHARLES F. CONSAUL and IDA M. MOYERS, Administrators of Gilbert Moyers, Deceased, Defendants.

Now come the defendants, by Cole & Donaldson, their solicitors, and except to the report of the Auditor filed herein on December 20th, 1906, and for cause of exception say:

500 First. That the Auditor erred in holding that the claims of Jane Edge, Herbert Smith, and Lucy A. Caldwell, or any of them, were partnership claims, or that the partnership had any interest in any of them.

Second. Assuming that any one or all of said three claims were in fact partnership claims, which is expressly denied, then the Auditor erred in not allowing the firm of Moyers & Consaul compensation for services rendered by them in the prosecution of said claims in the Court of Claims after the death of said Gilbert Moyers, and charging the same as a partnership expense.

COLE & DONALDSON,
Solicitors for Defendants.

Report of Auditor. Filed January 4, 1907.

In the Supreme Court of the District of Columbia.

Equity. No. 20802.

HORACE S. CUMMINGS, Administrator,
vs.
CHARLES F. CONSAUL ET AL., Administrators.

This cause is referred to the Auditor to ascertain and report whether the payment of $201.90 to the intervenor George M. Barber authorized by the decree and in settlement for his services in the matter of the claim of the estate of Thomas Kidd against the United States, is chargeable against the partnership between George

501 B. Edmunds deceased and Gilbert Moyers deceased, or against the defendants alone as administrators of the estate of said Moyers, and to further ascertain and report how the amount reserved by the receivers pending the determination of said claim, or the balance remaining after the payment of said claim, shall be dis-

tributed as between the complainants and the defendants. After due notice to the counsel, I proceeded with the reference. The original petition of the intervenor, together with the answers of the complainant and the defendants in this cause, and the depositions taken by the intervenor, appear to have been lost and copies of the petition and answers are submitted by stipulation in this reference. The stipulation also sets forth in substance the evidence contained in the lost depositions.

The claim of Barber forms a part of the history of the Kidd case which was one of the claims included in the partnership agreement between Gilbert Moyers and Edmunds. In the proceedings under a former order of reference the defendant claimed credit for money paid to W. A. Montgomery a local attorney for services rendered in procuring evidence in that case under an agreement whereby he was to receive a stipulated portion of the attorney's fee.

In my report as I construed and applied the partnership agreement, I did not allow the credit but on exceptions of the defendant the cause was subsequently referred back to me to ascertain and report a reasonable fee to local attorneys in the case, which I did.

At that time the Barber claim had not been paid, but was
502 disputed by both complainant and defendant and he had intervened in this cause by petition. The claim therefore was not considered in that reference, but the full amount of Barber's demand of ten per cent. of the entire collection fee was held by the Receivers for further proceedings.

The claim has now been settled, Barber is no longer a party, and the issues of reasonable allowance and payment being adjusted there remains only the question whether it shall be treated as a partnership expense or chargeable wholly to the defendants. Following the directions of the former order of reference and my report thereunder on the payment to Montgomery, I have to report the payment to Barber as a partnership expense.

JAS. G. PAYNE, *Auditor.*

503 *Distribution of Fund Reserved to Meet the Claim of George M. Barber.*

Amount retained by Receivers	$682.00
Paid George M. Barber full settlement per agreement	201.90
	$480.10
The Complainant:	
One-half	$240.05
Administrators of the Estate of Gilbert Moyers:	
One-half	240.05
	$480.10

Auditor's fee, $10.00.

JAS. G. PAYNE, *Auditor.*

504 *Complainant's Exceptions to Report of Auditor of Jan. 4, 1907.*

Filed January 4, 1907.

In the Supreme Court of the District of Columbia.

In Equity. No. 20802.

HORACE S. CUMMINGS, Administrator of the Estate of George B. Edmunds, Deceased, Complainant,

vs.

CHARLES F. CONSAUL ET AL., Administrators of the Estate of Gilbert Moyers, Defendants.

Comes now the complainant in the above entitled cause and excepts to so much of the report of the Auditor filed January 4th, 1907, as charges the former partnership between said Edmonds and said Moyers with the payment of the $201.90 paid the intervenor, George M. Barber, upon the ground that said payment is properly chargeable against the estate of said Moyers alone, and the share of the complainant, as administrator of the said Edmonds, in the fee earned and received in the matter of the estate of Thomas Kidd cannot properly be reduced under the partnership contract by a contract made by said Moyers without the knowledge or consent of the said Edmonds, or any one representing him.

TUCKER & KENYON,
Solicitors for Complainant.

505 *Intervening Petition of George M. Barber.*

Filed January 4, 1907.

In the Supreme Court of the District of Columbia.

In Equity. No. 20802, Doc. 47.

HORACE S. CUMMINGS, Adm'r, Complainant,

vs.

GILBERT MOYERS, Defendant.

The petitioner, George M. Barber, desiring to intervene in the above entitled cause, respectfully shows to the Court as follows:

1. He is a citizen of the United States and a resident of Vicksburg in the State of Mississippi.

2. He was employed by Gilbert Moyers, the defendant in the above entitled cause, to perform certain services in the prosecution of one of the claims involved in these proceedings, to wit, the claim known as the "Kid- Claim," and for the services so rendered the

petitioner was promised by the said Moyers ten per centum of the attorney's fee in the case, the said fee being conditioned on the prosecution of the said claim to a successful issue. The said Moyers, writing to this petitioner under date of December 7, 1889, said:

"I enclose you brief in the Kidd case. Please send for the party who represents this claim and see what additional evidence can be furnished. If you will work up this case I will give you 10
506 per — of my fee. It looks like a good claim. The parties making affidavits before the agents should be seen. I make you a liberal offer in this case and hope you will not leave a stone unturned in working up the proof."

Writing again to this petitioner under date of December 16, 1889, the said Moyers used the following language:—

"In these cases you know very well my fee is contingent. In the Kidd case I made you what I thought a liberal proposition for simply taking additional evidence on loyalty, and, if you can not attend to it, please turn the papers over to some one that will. I want this case attended to right away, and I know if you will notify the parties they would get in the witnesses."

3. The petitioner, upon receipt of the letters above mentioned, at once, as requested by the said Moyers, communicated with the owner of the Kidd claim, hunted up the witnesses, obtaining the necessary testimony and forwarded it to Washington. The petitioner performed such service in the matter as was requisite to the proper accomplishment of what he had been requested to do by the said Moyers for the doing of which he was to have ten per cent. of the fee that should accrue to the attorneys if the prosecution of the said claim should meet with success.

4. The said claim was considered by the United States
507 Court of Claims under authority given by what is known as the Bowman and Tucker acts and was allowed in the sum of $13,460, the report and finding of the said court being in favor of C. L. Kidd and Mary O. King, executors of the Estate of Thomas Kidd, deceased, and provision was made for the payment of the said claim in an act of Congress approved May 27, 1902, the provision for the payment of the said claim being as follows:—

"To C. L. Kidd and Mary O. King, executors of the estate of Thomas Kidd, deceased, thirteen thousand, four hundred and sixty dollars" (32 Stat. at L., p. 212).

5. The attorney's fee, payable from the proceeds of the said claim and based upon agreement made by the owners of the said claim for the prosecution thereof is $6820, the same being fifty per centum, or one half, of the amount recovered from the Government; and of this half the petitioner, for services rendered in connection with the prosecution of the said claim, is entitled to ten per centum, or $682.00, as per agreement made with this petitioner by the said Gilbert Moyers, the said Moyers at the time of such agreement being duly charged with the prosecution of the said claim.

6. The said sum of $13640 has been duly paid by the Government and the same, except such part as was paid to the executors

of Thomas Kidd, deceased, and to one Montgomery, is now in the hands of Charles Cowles Tucker and Henry F. Woodward, duly appointed the receivers of this court in these proceedings.

508 7. The petitioner, for services duly rendered in the prosecution of the Kidd claim above mentioned, is entitled to $682.00 and the same is payable from funds now in the hands of the receivers in this cause, the said fund being held by the receivers subject to the order of this Honorable Court in the premises.

8. The present suit, wherein the petitioner desires to intervene, is a controversy between the administrators of the estate of George B. Edmonds, deceased, and the said Gilbert Moyers concerning the ownership and proper division between the said parties of the attorney's fees in a number of cases the prosecution of which in the Court of Claims was in the hands of the said Gilbert Moyers, one of the said cases so in controversy being the Kidd case above mentioned.

Wherefore the petitioner, for the purpose of establishing his claim to the extent aforesaid in the funds now in the hands of the receivers herein, and in order that complete justice may be done in the premises, respectfully prays of this Honorable Court as follows:—

1. That he be allowed to file this his petition and become a party to these proceedings.

2. That the complainant Horace S. Cummings, administrator, and the defendant Gilbert Moyers be cited to answer the exigency of this petition.

3. That this petitioner George M. Barber be decreed entitled to $682.00 of the attorney's fee, paid in the Kidd claim aforesaid, the said sum of $682.00 to be paid from the moneys now in the

509 hands of the receivers in this cause, the said moneys being part of the attorney's fee paid in the Kidd case aforesaid.

4. That the petitioner have such other relief as may be proper and to the Court shall seem fit.

GEORGE M. BARBER,
By His Attorney, FRED BEALL.

DISTRICT OF COLUMBIA, *ss:*

Fred Beall, on oath, says as follows:—

I am acquainted with the contents of the foregoing paper, the same being a petition by George M. Barber, of Vicksburg, Mississippi. I am authorized to verify the said petition which I do by stating that some of the facts set forth in the said petition are true according to my personal knowledge, and that the other facts set forth in the said petition are true according to my information and belief.

FRED BEALL.

Subscribed and sworn to before me this 3rd day of March, A. D. 1903.

ALSON L. BAILEY,
Notary Public, D. C.

510 JANUARY 2, 1907.

It is stipulated and agreed by and between the parties to this cause, by their respective solicitors, that the above is a true and accurate copy of the original answer filed by the Defendants herein, and that the same shall be filed and used for all purposes of this Cause, in lieu of the original petition which has been mislaid or lost.

——— ———, *Sols. for Complainant.*
R. GOLDEN DONALDSON,
Sols. for Defendant.

Answer of Complainant to Intervening Petition.

Filed January 4, 1907.

In the Supreme Court of the District of Columbia.

Equity. No. 20802.

HORACE S. CUMMINGS, Administrator, Complainant,
vs.
CHARLES F. CONSAUL and IDA M. MOYERS, Administrators of Gilbert Moyers, Defendants.

The complainant in the above entitled cause, Horace S. Cummings, administrator of George B. Edmonds, deceased, answering the intervening petition of George M. Barber, filed herein
511 on the 3rd day of March, 1903, respectfully shows unto the court as follows, to wit:

This respondent has no knowledge whatever of the matters and things set forth in the said petition and can neither admit nor deny the same; but so far as they may — deem- by the court material, or to affect the interests of this respondent, or the estate which he represents, this respondent calls for strict proof thereof.

This respondent further answering said petition avers that his intestate, George B. Edmonds, did not employ, or authorize the employment of the said petitioner, George M. Barber, in the matter of the prosecution of the said Kidd claim, or have any knowledge that the said petitioner had been employed in or about the prosecution of said claim, if, in fact, he was so employed; and this respondent, under advice of counsel, claims that the share of the fee due the estate of said intestate, under and by virtue of the partnership agreement between said intestate, and Gilbert Moyers, deceased, is not chargeable with the payment of the claim of said petitioner for services, if any he has.

And having fully answered said petition, this respondent prays to be hence dismissed with his reasonable cost.

HORACE S. CUMMINGS, *Respondent.*

TUCKER & KENYON,
Solicitor- for Respondent.

512 DISTRICT OF COLUMBIA, *to wit:*

I, Horace S. Cummings, do solemnly swear that I have read the foregoing answer by me subscribed and know the contents thereof; that the facts therein stated of my personal knowledge are true and those stated on information and belief I believe to be true.

HORACE S. CUMMINGS.

Subscribed and sworn to before me this — November, 1903.

——— ———,
Name of Notary.

JANUARY 2, 1907.

It is stipulated by and between the parties to this Cause, by their respective solicitors, that the above is a true and accurate copy of the original answer filed by the Complainants herein and that the same shall be filed and used for all purposes of this Cause, in lieu of the original answer, which has been mislaid or lost.

TUCKER & KENYON,
Sols. for Complainant.
R. GOLDEN DONALDSON,
Sols. for Defendants.

513 *Answer of Defendants to Intervening Petition of Barber, &c.*

Filed January 4, 1907.

In the Supreme Court of the District of Columbia.

No. 20802.

HORACE S. CUMMINGS, Administrator,
vs.
IDA M. MOYERS ET AL.

For answer to said petition these defendants say:

1. That they admit that the petitioner is a citizen of the United States and a resident of Vicksburg in the State of Mississippi.

2. They admit that the said Gilbert Moyers in his lifetime wrote and sent the said petitioner two letters and that the quotations from said letters appearing in said second paragraph are substantially correct, but for greater certainty they refer to the letters themselves and pray that they may be made a part of this answer and read in connection herewith.

3. For answer to the third paragraph of said petition these defendants deny that the said petitioner upon the receipt of said letters, at once, or at any time, obtained the necessary testimony upon the point requested in said letters or forwarded any testimony to Washington upon the point of loyalty or any other point involved in the claim of the said Kidd, but he wholly failed and neglected to

perform any part of the service requested of him in said let-
514 ters and wholly failed to obtain any evidence whatever bearing upon said claim and subsequently in the year 1895, or thereabout the said Gilbert Moyers made an arrangement with one William A. Montgomery to look up and take the evidence which he had formerly requested the said petitioner to do.

These defendants for further answer to said third paragraph say that the said petitioner rendered no services whatever in obtaining or taking evidence in support of the said claim and they also deny that he did any services whatever in relation thereto and they also deny that he is entitled to any compensation whatever out of the fund in court or from the said Moyers.

And they are advised and believe and upon such advice and belief answer that even if the said petitioner was entitled to receive anything from the said Moyers in his lifetime or from these defendants as representatives of his estate for any services claimed to have been rendered by him in the matter of the said Kidd claim, the same constitutes only a simple contract debt against the estate of the said Moyers and does not constitute any lien whatever upon any part of the fund now in the hands of the said receivers arising from the fee in the Kidd claim, and that he is in no event entitled to any part of said fund.

By way of further answer to the said third paragraph of said petition these defendants say that prior to the filing of the petition in this cause the said petitioner instituted a suit in the County of Warren in the State of Mississippi against the said Gilbert Moyers and obtained personal service upon him in said suit. That in the
515 said suit the said Barber claimed and claims a considerable sum of money from the said Moyers on account of various services by him rendered at the instance of the said Moyers, all of which the said Moyers denied by his plea and answer subsequently filed in said cause and said suit has been removed to, and is now pending in the Circuit Court of the United States for the District of Mississippi and the said petitioner has had ample time and opportunity to have tried said suit, but although the same is still pending he has never pressed it to trial.

4. The defendants admit as substantially true the allegations of the fourth paragraph of said petition.

5. The defendants admit that the amount of the fee in said Kidd claim was $6,820.00, but they deny that the petitioner is entitled to the sum of $682.00 thereof, or any other sum as claimed in said fifth paragraph.

6. Answering the sixth paragraph of said petition these defendants admit that all of the fee in said cause, except the sum of $2,000.00, which was paid to said William A. Montgomery, is in the hands of the receivers appointed by this court.

7. Defendants deny the allegations of the seventh paragraph of said petition.

8. The defendants admit as substantially true the allegations of the eighth paragraph of said petition.

The defendants having fully answered said petition pray that the

same may be dismissed and that they may recover their costs in this behalf.

IDA M. MOYERS.
CHARLES F. CONSAUL.

516 DISTRICT OF COLUMBIA, *to wit:*

Ida M. Moyers and Charles F. Consaul being duly sworn say upon oath that they are the defendants mentioned in the foregoing answer; that they have read the same and know the contents thereof; that the matters therein stated upon their own knowledge are true and those stated upon information and belief they believe to be true.

IDA M. MOYERS.
CHARLES F. CONSAUL.

Subscribed and sworn to before me this 10th day of November, A. D. 1903.

FRANCIS L. NEUBECK,
Notary Public, D. C.

[SEAL.]

COLE & DONALDSON,
Sol's for Petitioners.

JANUARY 2, 1907.

It is stipulated and agreed by and between the parties to this Cause, by their respective solicitors, that the above is a true and accurate copy of the original answer filed by the Defendants herein and that the same shall be filed and used for all the purposes of this Cause, in lieu of the original answer, which has been mislaid or lost.

TUCKER & KENYON,
Sol's for Complainant.
R. GOLDEN DONALDSON,
Sol's for Defendant.

517 *Decree.*

Filed January 8, 1907.

In the Supreme Court of the District of Columbia.

Equity. No. 20802.

HORACE S. CUMMINGS, Administrator of the Estate of George B. Edmonds, Complainant,
vs.
CHARLES F. CONSAUL and IDA M. MOYERS, Administrators of the Estate of Gilbert Moyers, Defendants.

This cause coming on to be heard upon the report of the Auditor of the Court filed May 1st, 1906, and the exceptions thereto of the complainant and the defendants; upon the report of the Auditor

filed December 21st, 1906, and the exceptions thereto of the defendants, and upon the report of the Auditor filed January 4th, 1907, and the exceptions thereto of the complainant, and the parties having consented to the immediate hearing of said exceptions, it is, by the court, this 8th day of January, 1907, adjudged, ordered and decreed as follows, to wit:

1. That each and every of said exceptions be, and the same is hereby, overruled, and said reports be, and the same are hereby, finally ratified and confirmed.

2. That the complainant, as shown by the said report of the Auditor filed May 1, 1906, is entitled to recover from the defendants, as administrators of the estate of Gilbert Moyers, the sum of
518 $12,813.74, being the sum found to be due the complainant, as of September 16, 1899, namely, $8,906.68, with interest thereon to the date hereof; also the sum of $311.72, being the sum found to be due the complainant on account of the fee collected by defendants' intestate, Gilbert Moyers, in the case of Joel C. Johnson, Administrator of Richard W. Johnson, namely, $246, with interest thereon from July 25, 1902, to the date hereof; and also the sum of $964.99 being the sum found to be due the complainant by the said report of the Auditor filed December 21st, 1906, or a total of $14,090.45, with interest until paid.

3. That of the sum of $480.10 remaining of the $682 heretofore retained by the receivers herein pending the determination of the claim of George M. Barber, intervenor, as shown by the said report of the Auditor filed January 4th, 1907, after payment of the sum of $201.90 to said Barber as directed by the order of the Court made December 26th, 1906, the complainant is entitled to one-half, namely, $240.05 and the defendants to one-half, namely, $240.05.

4. That of the balance of the sum of $6,430.82, in the hands of said receivers, as shown by said report of said Auditor filed May 1, 1906, after deducting $152, costs of references and also said $682 retained by said receivers, distribution of which is hereinbefore provided for, which said balance amounts to $5,596.82, the complainant, as shown by said last mentioned report, is entitled to the sum of $1,896.05 and the defendants to the sum of $3,700.77.

519 5. That the said receivers be, and they are hereby directed to pay over forthwith to the said complainant the sums of $1,896.05 and $240.05 found to be due by the Auditor's reports filed May 1, 1906, and January 4th, 1907, and also the sums of $3,700.77 and $240.05 found to be due the defendants by said last mentioned reports, which said sums of $3,700.77 and $240.05 shall, when paid, be credited upon the sum of $14,090.45, due the complainant from the defendants according to the provisions of Paragraph 2 hereof, leaving a balance due the complainant from the defendants on account thereof of $10,149.63, which last mentioned sum the complainant shall recover from the defendants, as administrators as aforesaid, as of the date hereof, together with the costs of suit, to be taxed by the Clerk, and have execution therefor as at law.

6. That this cause be, and the same is hereby retained, and the right saved and reserved to the complainant to apply to this Court

from time to time for an order or orders for the payment of such other and further sums of money as have or shall come into the hands of the defendants, as administrators of Gilbert Moyers, deceased, on account of the partnership heretofore adjudged to have existed between the said deceased and the said George B. Edmonds, deceased, or into the hands of the said receivers, and which may or shall be due the complainant, as administrator of said George B. Edmonds, by reason of said partnership.

HARRY M. CLABAUGH,
Chief Justice.

520 From the foregoing decree the defendants in open court pray an appeal to the Court of Appeals of the District of Columbia, which is hereby allowed, and the penalty of the appeal bond, if one is given to operate as a super*dedeas*, is hereby fixed at Fifteen thousand dollars ($15,000), and if it is to act as a bond for costs only, then in the sum of Two hundred dollars.

HARRY M. CLABAUGH,
Chief Justice.

Memorandum.

January 21, 1907.—Appeal bond filed.

Order Extending Time to File Transcript of Record.

Filed March 1, 1907.

In the Supreme Court of the District of Columbia.

Equity. No. 20802, Doc. 46.

HORACE S. CUMMINGS, Administrator of George B. Edmunds, Deceased,
vs.
CHARLES F. CONSAUL ET AL., Administrators Gilbert Moyers, Deceased.

Upon consent of the parties hereto, it is this First day of March, 1907, ordered that the time within which defendants shall
521 file in the Court of Appeals of the District of Columbia their transcript of record on their appeal in this cause, be and it is hereby, extended to and including the 1st day of April, 1907.

HARRY M. CLABAUGH,
Chief Justice.

O. K.
TUCKER & KENYON,
Sol's for Compl't.
R. G. DONALDSON,
Sol. for Def't.

Order Further Extending Time of Filing Transcript of Record.

Filed March 30, 1907.

In the Supreme Court of the District of Columbia.

Equity. No. 20802.

HORACE S. CUMMINGS, Administrator,
vs.
CHARLES F. CONSAUL ET AL., Administrators.

Upon motion in that behalf, counsel for the respective parties consenting thereto, it is this 30th day of March, A. D., 1907, ordered that the time within which the complainant shall file in the Court of Appeals of the District of Columbia his transcript of record on appeal in this cause be, and it is hereby, extended to and including the tenth day of April, 1907; and that the time within which the defendants shall likewise file their transcript of record on appeal
522 in said Court of Appeals be, and it is hereby, extended to and including the 9th day of April, A. D. 1907.

JOB BARNARD, *Justice.*

Defendants' Designation for Transcript of Record.

Filed February 13, 1907.

In the Supreme Court of the District of Columbia.

Equity. No. 20802.

HORACE S. CUMMINGS, Administrator of George B. Edmonds, Deceased, Complainant,
vs.
CHARLES F. CONSAUL and IDA M. MOYERS, Administrators Gilbert Moyers, Deceased, Defendants.

The Clerk will please include in the transcript of record to be prepared on the appeal in the above entitled cause the following parts of the record in this cause, to wit:

1. Report of Auditor filed January 5th, 1904, with accompanying evidence from page one to one hundred and six, inclusive.

2. Exceptions to said last mentioned report filed February 3rd, 1904.

3. Mandate of Court of Appeals, filed June 11th, 1904.

4. Complainant's motion to refer to Auditor, filed Sep-
523 tember 24th, 1904.

5. Petition of defendants for leave to introduce newly discovered evidence &c., filed ——, 1904.

6. Decree overruling last mentioned petition and exceptions to

Auditor's report, and referring cause to Auditor, filed January 21st, 1905.

7. Order referring cause to Auditor, filed November 7th, 1905.

8. Report of Auditor filed May 1st, 1906.

9. All vouchers and exhibits accompanying said last mentioned report of Auditor, filed May 7th, 1906.

10. Exceptions of complainant to Auditor's report, filed May 31st, 1906.

11. Stipulation of counsel as to time of filing exceptions to Auditor's report, filed June 1st, 1906.

12. Defendants' exceptions to Auditor's report filed June 8th, 1906.

13. Report of Auditor, and vouchers and exhibits accompanying same, filed December 21st, 1906.

14. Stipulation of counsel as to Barber claim, filed December 24th, 1906.

15. Decree directing settlement of claim of George M. Barber, filed December 26th, 1906.

16. Defendants' exceptions to Auditor's report filed December 21st, 1906, said exceptions filed January 3rd, 1907.

17. Report of Auditor filed January 4th, 1907.

524 18. Complainant's exceptions to last mentioned report, filed January 4th, 1907.

19. Copy of intervening petition of Barber filed January 4th, 1907.

20. Copy of answer of complainant to said intervening petition filed January 4th, 1907.

21. Copy of answer of defendants to said intervening petition filed January 4th, 1907.

22. Decree overruling all exceptions to, and confirming, reports of auditor, filed January 8th, 1907.

23. Memorandum of the filing by defendants of supersedeas bond for Fifteen thousand dollars and approval of Court thereof, filed January 21st, 1907.

24. Stipulation of counsel as to purport and contents of Exhibit R. G. D. No. 1 to report of Auditor filed May 1st, 1906.

25. This designation.

COLE & DONALDSON,
Solicitors for Defendants.

FEBRUARY 12TH, 1907.

To Messrs. Tucker & Kenyon, Solicitors for Complainant.

SIRS: Please take notice that we have this day filed with the Clerk of the Court the foregoing designation of such parts of the record in the above entitled cause to be included in the transcript of record on the appeal herein noted by the defendants.

COLE & DONALDSON,
Solicitors for Defendants.

525 *Order Further Extending Time of Filing Transcript of Record.*

Filed April 8, 1907.

In the Supreme Court of the District of Columbia.

Equity. No. 20802.

HORACE S. CUMMINGS, Administrator,
vs.
CHARLES F. CONSAUL ET AL., Administrators.

Upon motion in that behalf, counsel for the respective parties consenting thereto, it is this 8th day of April, A. D., 1907, ordered that the time within which the complainant shall file in the Court of Appeals of the District of Columbia his transcript of record on appeal in this cause be, and it is hereby, extended to and including the 17th day of April, 1907; and that the time within which the defendants shall likewise file their transcript of record on appeal in said Court of Appeals be, and it is hereby extended to and including the 16th day of April, A. D., 1907.

ASHLEY M. GOULD, *Justice.*

O. K.
R. G. D.
O. K.
C. C. T.

526 *Stipulation.*

Filed April 10, 1907.

In the Supreme Court of the District of Columbia.

Equity. No. 20802.

HORACE S. CUMMINGS, Administrator of Estate of George B. Edmonds, Dec'd,
vs.
CHARLES F. CONSAUL and IDA M. MOYERS, Administrators of Estate of Gilbert Moyers, Deceased.

It is hereby stipulated and agreed by and between counsel for the respective parties hereto, that the Defendants' Exhibit, "R. G. D. No. 1," to the deposition of the witness Francis L. Neubeck, which said Exhibit is considered by and in the report of the Auditor of this Court, filed May 1, 1906, and which said Exhibit is endorsed as filed in this Court on November 15, 1906, consists of 52 pages of typewriting, closely written at half space, and sets forth in itemized form a statement of expenses alleged on behalf of the Defendants to have

been incurred by their decedent, Gilbert Moyers, in and about the prosecution of the 160 various claims enumerated in said exhibit, of which said claims 94 claims had been dismissed by the Court of Claims at date of preparation of said Exhibit, and of which list 66 claims were then pending in said Court. The names of the claimants and the docket numbers thereof in the Court of Claims are as follows:

527

John W. Jones	No. 3789	Congressional.	Dismissed.
Antoinette Walsh	No. 7661	"	"
James A. Carden	No. 6838	"	"
Mary E. and Albert Jones.	No. 7485	"	Pending.
John J. McArthur	No. 3811	"	Dismissed.
Thomas Brown	No. 8400	"	Pending.
Charles Weill	No. 7492	"	"
Horatio Woodward	No. 7959	"	Dismissed.
Asa Boswell	No. 3496	"	Pending.
William Whitaker	No. 8982	"	Dismissed.
" "	No. 9594	"	Pending.
William Talliaferro	No. 4159	"	Dismissed.
John R. McAlpine	No. 3810	"	"
David B. Johnson	No. 6947	"	Pending.
Joseph A. Weatherly	No. 3357	"	Dismissed.
Patrick H. Flannigan	No. 6894	"	"
Phillip Gordon	No. 6852	"	"
Andrew Zellner	No. 7480	"	Pending.
George W. Spotts	No. 6824	"	Dismissed.
William C. Battle	No. 6807	"	Pending.
M. B. D. Vaughn	No. 7947	"	"
Abraham M. Weaver	Nos. 6793, 7607 and 7970	"	Dismissed.
W. F. Hurt	No. 7810	"	"
Richard H. Willett	No. 5612	"	"
George F. Ponder	No. 4470	"	"
Andrew Kremer	No. 3361	"	"
Jordan Lyons	No. 6787	"	Pending.
Peter Lynch	No. 6812	"	Dismissed.

528

Isaac V. Burns	No. 3368	Congressional.	Pending.
Allen J. Veal	No. 6842	"	"
William Rutherford	No. 6853	"	Dismissed.
G. W. Bane	No. 5842	"	Pending.
J. C. Spight	No. 7466	"	"
Thomas Shelby	No. 3412	"	Dismissed.
Samuel H. Miller	No. 5730	"	"
Margaret Bloodworth	No. 6804	"	Pending.
John McKinnie	No. 3823	"	Dismissed.
A. R. Leonard	No. 7451	"	"

John Cox	No. 3348	Congressional.	Dismissed.
A. W. Stafford	No. 1915	"	Pending.
Martha Crane	No. 5109	"	Dismissed.
James A. Mahon	No. 7487	"	"
William T. Lamb	No. 3768	"	"
J. N. Townsend	No. 6896	"	Pending.
William Lasley	No. 7486	"	Pending.
Zaddock C. Baker	No. 6855	"	Dismissed.
John G. Grant	No. 6876	"	Pending.
Mary Wellmaker	No. 6794	"	"
Susan Davis	No. 6821	"	Dismissed.
John Ficken	No. 6844	"	"
Jefferson Burnett	No. 7484	"	"
Susan Carrier	No. 6820	"	"
L. D. Aldrich	No. 5848	"	"
Sarah Cagle	No. 6968	"	Pending.
James I. Drumgoole	No. 7465	"	Dismissed.
William M. Bowles	No. 5184	"	"
John T. Bell	No. 4829	"	"

529

Henry Badon	No. 5849	Congressional.	Dismissed.
W. S. Bunch	No. 3492 & 5633	"	"
Mortimer W. Venning	No. 4052	"	Pending.
Ballard D. Dean	No. 6882	"	Dismissed.
James A. Houston	No. 3374	"	"
Robert C. Hamer	No. 6885	"	Pending.
Francis B. Ragsdale	No. 4088	"	Dismissed.
Harriett Langston	No. 7450	"	Pending.
J. M. H. Martin	No. 7463	"	"
Martin Caufield	No. 4500	"	Dismissed.
Isaac Roberts	No. 7157	"	"
Joel L. Easterling	No. 6890	"	Pending.
Mary O'Cain	No. 6887	"	Dismissed.
T. P. Stubbs	No. 4491	"	Pending.
Mrs. E. B. De Vaughn	No. 7946	"	"
Josiah L. Bell	No. 6917	"	"
Annie M. Smith	No. 9421	"	"
Peter Elinger	No. 6811	"	"
Arthur J. Hill	No. 6928	"	Dismissed.
James C. Ballance	No. 8252	"	"
Jane Hopkins	No. 3345	"	Pending.
William D. Hemp	No. 8635	"	Dismissed.
Joseph J. Jordan	No. 6895	"	Pending.
William J. Porter	No. 6933	"	Dismissed.
Aaron A. Marrs	No. 8719	"	"
Isaac Bloom	No. 1835	"	"
" "	No. 8289	"	Pending.
John Baker	No. 4490	"	"

530

Lucy Breeden	No. 6874	Congressional.	Dismissed.
Joseph R. Franklin	No. 6878	"	Pending.
Carter Carr	No. 6829	"	"
Robert Waters	No. 7958	"	"
Hector McMillan	No. 6922	"	Dismissed.
Johanna Mereckle	No. 5785	"	Pending.
Daniel L. Smith	No. 8853	"	Dismissed.
Samuel Cline	No. 4441	"	"
Esidore Cohen	No. 6920	"	"
John J. Gardner	No. 6826	"	"
Harry Durham	No. 6901	"	Pending.
Needham G. Gully	No. 8463	"	"
Thomas B. Paine	No. 7768	"	Dismissed.
Francois Bouligny	No. 6965	"	Pending.
Jacob C. Douthit	No. 7806	"	"
James Dougherty	No. 7819	"	Dismissed.
John Brewer	No. 5108	"	Pending.
Oliver Bartley	No. 8333	"	Dismissed.
Joseph Click	No. 4469	"	"
Noah M. Funkhouser	No. 4489	"	"
James H. Hyatt	No. 6907	"	"
Ezra B. Towne	No. 3431	"	"
Samuel Fitzhugh	No. 1673	"	Pending.
Emily V. Glover	No. 3680	"	Dismissed.
John B. Fauver	No. 8552	"	"
Celestine Dauterive	No. 6828	"	"
W. K. Abbott	No. 4467	"	"
Minerva Tilley	No. 4643	"	"
Nelson T. Thompson	No. 6879	"	"

531

Pleasant Baker	No. 6839	Congressional.	Dismissed.
John Griffith	No. 1189	"	"
Elijah Parker	No. 6906	"	"
David W. Morton	No. 6935	"	Pending.
James Lowry	No. 7960	"	Dismissed.
John Lowry	No. 3367	"	"
John B. Suggs	No. 6932	"	Pending.
Mary E. Jones, Tutrix, Jesse Burgess, Dec'd	No. 6825	"	"
Jefferson J. Caffery	No. 6832	"	Dismissed.
John Davis, Jr.	No. 6915	"	Pending.
Morgan Layton	No. 4493	"	"
Arrey Marrs	No. 8370	"	Dismissed.
Nancy T. M. Tooley	No. 6936	"	"
John Sours	No. 8341	"	"
Thomas D. Harris	No. 7807	"	Pending.
Craven J. King	No. 1887	"	Dismissed.
Mary A. England	No. 3962	"	"

Stephen S. Howell.....	No. 7828	Congressional.	Pending.
Sarah M. Spyker.....	No. 6856	"	"
Michael Carwell	No. 6841	"	Dismissed.
Thomas H. Rollins.....	No. 9384	"	Pending.
Louisa B. Martin.....	No. 6830	"	"
Susan M. Thagard.....	No. 6926	"	Dismissed.
Estelle Chidester	No. 1963	"	Pending.
John H. Funkhouser.....	No. 4460	"	"
Hugh Dobkins	No. 6691	"	Dismissed.
Abraham Eichburg	No. 1759	"	"
Sarah Allen	No. 1185	"	"
Samuel Roller	No. 4454	Congressional.	Pending.

532

Robert Green	No. 7936	"	"
William R. Clark.....	No. 6923	"	Dismissed.
Harrison Fauber	No. 4442	"	"
Sarah A. Freeman.....	No. 7949	"	Pending.
Samuel Fetzer	No. 4455	"	Dismissed.
Samuel H. Wampler ...	No. 4468	"	Pending.
Emanuel M. Hoover.....	No. 4474	"	"
Zachariah F. Galbreath..	No. 6810	"	"
Francis F. Curtis.....	No. 8440	"	"
John F. Hottle.....	No. 4458	"	Dismissed.
Francis J. Morton *et al*...	No. 6877	"	Pending.
B. F. Childrey.....	No. 3191	"	Dismissed.
Charles T. Weston.....	No. 1907	"	"
Jarvis Williams	No. 6897	"	Pending.
Patrick Brady	No. 4494	"	Dismissed.
John F. Phifer.....	No. 6924	"	Pending.
Marcellus J. Edwards....	No. 6916	"	Dismissed.
" " "	No.10192	"	Pending.
James L. Roane.....	Nos. 1332 and 9354	"	Dismissed.
Richard Harding	No. 7467	"	"

Said itemized statement of expenses alleges a total expense of one thousand seven hundred thirty dollars and nine cents ($1730.09); of which total sum, the sum of one hundred dollars and seventy cents ($100.70) is on account of letters written by Gilbert Moyers in and about said claims; that of said sum so charged for writing of letters, the sum of fifty-two dollars and ninety cents ($52.90)
533 is charged for five hundred twenty-nine (529) letters at ten cents each.

The following is an abstract of said Exhibit, showing in a general manner the different classes of items charged therein:

To 529 letters, at 10 cents each	$52.90
To other letters, found in copy books	47.80
To traveling expenses incurred in taking testimony in different Southern States	158.00
To preparing 254 abstracts and briefs	434.15
To fees of commissioners and notaries, for taking testimony, at rates prescribed by rules of Court of Claims	817.74
To preparing and filing written appearances in 160 cases, at 15 cents each	24.00
To preparing in duplicate and filing motions for calls by Court of Claims upon Executive Departments and Clerk of House of Representatives, as follows:	
257 motions at 25 cents each	64.25
4 motions at 20 cents each	.80
9 motions at 15 cents each	1.35
To preparing in triplicate, and filing, 138 notices to Department of Justice of taking of testimony on behalf of claimants, at 25 cents for each triplicate set	34.50
To preparing and filing 15 petitions, some accompanied by motions, at 30 cents each	4.50
Preparing and filing motions for new trial with affidavits, in 26 cases	35.40
Preparing and filing 34 stipulations for submission of cases on briefs	8.50
Preparing and securing 60 affidavits in support of motion for new trial	33.50
Preparing and filing miscellaneous motions, to withdraw papers, to substitute administrators, preparing statements of case to be used by Court of Claims in its findings of fact, and making copies of Departmental records for use before Court or in taking testimony, 52 papers	12.70
Total	$1730.09

534

This stipulation is entered into for the convenience of Court and counsel, to avoid the necessity of examining and printing said Exhibit "R. G. D. No. 1" in detail, it being also agreed that by reason of its great length said Exhibit "R. G. D. No. 1" may be omitted from the transcript of the record on appeal, this stipulation to be considered in lieu thereof, each party hereto, however, reserving the right to produce said original Exhibit or any other original paper forming a portion of the record of this case, on appeal, by permission of the Court.

It is further stipulated and agreed that the printed record previously before the Court of Appeals, in this case, shall be considered as a part of the present record on appeal.

Signed this 9th day of April, A. D. 1907.

TUCKER & KENYON,
Solicitors for Complainant.
COLE & DONALDSON,
Solicitors for Defendants.

535 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, *District of Columbia, ss:*

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 534, both inclusive, to be a true and correct transcript of the record according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 20802, In Equity, wherein Horace S. Cummings, Administrator, &c., is Complainant, and Charles F. Consaul *et al.*, Administrators, &c., are Defendants, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the city of Washington, in said District, this 12th day of April, A. D. 1907.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia supreme court. No. 1778. Charles F. Consaul *et al.*, appellants, *vs.* Horace S. Cummings, adm'r, &c. Court of Appeals, District of Columbia. Filed Apr. 15, 1907. Henry W. Hodges, clerk.

Court of Appeals, District of Columbia, October Term, 1907.

No. 1778.

CHARLES F. CONSAUL and IDA M. MOYERS, Administrators of the Estate of Gilbert Moyers, Deceased,

vs.

HORACE S. CUMMINGS, Administrator of the Estate of George B. Edmonds, Deceased.

Come now the appellants by R. Golden Donaldson, their attorney, and suggest to the Court the diminution of the record on appeal in this case in the following particulars, to wit:

1. Petition of Horace S. Cummings filed in the Supreme Court of the District of Columbia March 8th, 1905.

2. Report of Receivers filed in the Supreme Court of the District of Columbia March 8th, 1905.

3. Answer of defendants filed in the Supreme Court of the District of Columbia March 10th, 1905; and that said omitted matter is material and necessary to the fair trial of this case on its merits, and that this suggestion is not made for delay.

Wherefore the appellants pray that a writ of certiorari issue to the Justices of the Supreme Court of the District of Columbia commanding them to send to this Court forthwith the above enumerated papers.

R. GOLDEN DONALDSON,
Attorney for Appellants.

DISTRICT OF COLUMBIA, *to wit:*

R. Golden Donaldson, being first duly sworn, deposes and says that he is the attorney of record for the appellants in the above entitled cause; that the omitted matter mentioned in the foregoing suggestion of diminution of record is material and necessary to the fair trial of the case on its merits, and that the suggestion is not made for delay.

R. GOLDEN DONALDSON.

Subscribed and sworn to before me this 31st day of January, A. D. 1908.

HENRY W. HODGES,
Clerk Court of Appeals, D. C.

(Endorsed:) No. 1778. Charles F. Consaul and Ida M. Moyers, Administrators of the Estate of Gilbert Moyers, Deceased, vs. Horace S. Cummings, Administrator of the Estate of George B. Edmonds, Deceased. Suggestion of Diminution of Record. Court of Appeals, District of Columbia. Filed Jan. 31, 1908. Henry W. Hodges, Clerk.

FRIDAY, *January* 31*st*, A. D. 1908.

No. 1778.

CHARLES F. CONSAUL and IDA M. MOYERS, Administrators of Gilbert Moyers, Deceased, Appellants,

vs.

HORACE S. CUMMINGS, Administrator of George B. Edmonds, Deceased.

On consideration of a suggestion of the diminution of the record submitted by Mr. Charles F. Consaul, on behalf of counsel for the appellants, in the above entitled cause, praying the Court for a writ of certiorari directed to the Justices of the Supreme Court of the District of Columbia, commanding them to send to this Court forthwith a copy of the papers enumerated in the petition this day filed in said cause, it is ordered by the Court that said writ issue as prayed.

RETURN TO WRIT OF CERTIORARI.

Court of Appeals, District of Columbia

JANUARY TERM, 1908.

No. 1778.

CHARLES F. CONSAUL AND IDA M. MOYERS, ADMINISTRATORS OF GILBERT MOYERS, DECEASED, APPELLANTS,

vs.

HORACE S. CUMMINGS, ADMINISTRATOR OF GEORGE B. EDMONDS, DECEASED.

FILED JANUARY 31, 1908.

Petition.

Filed March 8, 1905.

In the Supreme Court of the District of Columbia.

In Equity. No. 20802.

HORACE S. CUMMINGS, Administrator, Complainant,
vs.
CHARLES F. CONSAUL and IDA M. MOYERS, Administrators, Defendants.

Horace S. Cummings, the complainant in the above entitled cause, respectfully showeth unto the Court as follows, to wit:

1. Complainant respectfully refers to and makes part of this petition as if fully herein set forth the report of the receivers, Messrs. Charles Cowles Tucker and Henry F. Woodard filed herein on this day.

2. Petitioner further showeth unto the Court that by decree of the Court passed herein on the 5th day of February 1903, it was decreed as follows:

"That this cause be and the same is hereby retained and the rights saved and reserved to the complainant to apply to this court from time to time for an order or orders for the payment of such other and further sums of money as he may show to have come into the hands of the defendant as surviving partner of the partnership heretofore adjudged to have existed between the said defendant and said George B. Edmonds, deceased, or into the hands of the receivers heretofore appointed herein or which may hereafter come into the hands of said defendant or said receivers or either of them and which may be due to the complainant as administrator of defendant's said deceased partner, George B. Edmonds by reason of the existence of said partnership," and by order of the Court passed on the 10th day of July, 1903, the defendants Charles F. Consaul and Ida M. Moyers, administrators of said decedent Gilbert Moyers were substituted as defendants in this cause in lieu of said Gilbert Moyers.

3. Your petitioner further avers that on reports made to the Court by said receivers orders were passed on the 28th day of May, 1902, and on the 6th day of June, 1902, directing the said receivers among other things to apply for and receive from the Treasury of the United States any money, warrants, checks or drafts that might become payable to the claimants in ten claims which had been appropriated for by the Act of Congress of May 27th, 1902, passed during the pendency of this cause which said claims it was shown by the reports of said receivers were properly partnership claims embraced in the partnership agreement between George B. Edmonds, deceased, and Gilbert Moyers, now deceased; that said receivers did collect said warrants or checks and have now in their hands the money derived therefrom on account of fees due the attorneys therein; and that this court has found that each one of said ten claims was in fact a partnership claim in which complainant, as administrator of said George B. Edmonds was entitled to one-half of the fees.

4. Your petitioner further shows that unless restrained and enjoined by this Court the defendants Charles F. Consaul and Ida M. Moyers will collect the checks or warrants due the claimants in the three claims which are the subject of the receivers' report filed this day, which said checks or warrants will amount in the aggregate to the sum of $6843, of which $3421 are due as fees to said partnership of Moyers and Edmonds on account of the prosecution of said claims.

5. That your petitioner is advised and therefore avers that said defendants Charles F. Consaul and Ida M. Moyers qualified by giving a bond as administrators in the sum of five thousand dollars, while the debts of the estate of said Gilbert Moyers amount to many times the penalty of said bond and that even if they collect the said fees amounting to $3421 as administrator- of said Gilbert Moyers, your complainant would not be protected in the premises. But your complainant further avers that as a matter of fact as shown

by the report of said receivers said Charles F. Consaul and Ida M. Moyers before the death of said Gilbert Moyers caused themselves to be substituted with the consent of the said Gilbert Moyers as attorneys of record for said three claimants in the Court of Claims which action was taken to defeat the rights of the complainant in the premises, and will proceed to collect the fees due in said three claims not as administrator of said Gilbert Moyers, but in their own right and assert themselves to be entitled individually and personally thereto.

6. Your petitioner is advised and believes and therefore avers that acting as the administrator of said decedent George B. Edmonds he is the owner of one-half of said fees in said three claims amounting in the aggregate to $3421 as aforesaid, subject to the sum due said Gilbert Moyers for expenses incurred by him in the prosecution of said claims and that it would be inequitable and unjust, in view of the attitude of said Charles F. Consaul and said Ida M. Moyers in the premises, to permit them to collect and appropriate to their own use the aforesaid fees.

The premises considered, the petitioner respectfully prays as follows, to wit:

1. That an order may be passed restraining and enjoining the defendants, Charles F. Consaul and Ida M. Moyers, pending the prosecution of this cause and perpetually from collecting or receiving any warrants, checks or drafts issued or to be issued by the Treasury of the United States in settlement of the three claims aforesaid, or the proceeds thereof.

2. That if the proceeds of said warrants, checks or drafts shall have been collected or received by said defendants Charles F. Consaul or Ida M. Moyers, that they and each of them be required to pay all sums of money so received by them, or to deliver said warrants, checks or drafts to the receivers in this cause.

3. That appropriate instructions be given said receivers to collect and get in the fees due from said three claimants or to assert the right of said deceased partners upon the checks, warrants or drafts to be issued in settlement of said claims, by proceedings in equity or otherwise, as may seem appropriate and best in the premises.

4. That said report of said receivers filed this day be referred to the auditor of this Court to ascertain and report to the Court how the fees due from and payable by said three claimants should be distributed between the petitioner and said defendants.

5. And for such other and further relief as to the Court may seem proper in the premises.

HORACE S. CUMMINGS,
Complainant.

TUCKER & KENYON,
Solicitors for Complainant.

DISTRICT OF COLUMBIA, *To wit:*

I do solemnly swear that I have read the foregoing petition by me subscribed and know the contents thereof; that the facts therein

stated upon my personal knowledge are true and those stated upon information and belief, I believe to be true.

HORACE S. CUMMINGS.

Subscribed and sworn to before me this 7th day of March, A. D. 1905.

[SEAL.]

HENRY W. REED,
Notary Public, D. C.

Report of Receivers.

Filed March 8, 1905.

In the Supreme Court of the District of Columbia.

In Equity. No. 20802.

HORACE S. CUMMINGS, Administrator, Complainant,
vs.
CHARLES F. CONSAUL and IDA M. MOYERS, Administrators, Defendants.

To the Justice holding said Court:

Charles Cowles Tucker and Henry F. Woodard heretofore appointed receivers in the above entitled cause under and by virtue of an order of the Court passed therein on the 20th day of June, 1900, respectfully report unto the Court as follows, to wit:

1. That by the Act of Congress passed on the 24th day of February, 1905, making appropriation for the payment of claims for stores and supplies, etc. in which findings had been made by the Court of Claims of the United States, appropriation was made to pay the following claims:—

J. D. Edge, administrator of Jane Edge, Court of Claims Docket No. 6847	$817.00
Sallie J. Adams, administratrix of Herbert Smith, Court of Claims Docket No. 4499	1826.00
Lucy J. Eton, executrix of Lucy A. Caldwell, Court of Claims Docket Nos. 2028 & 11146	4200.00
	$6843.00

Said three claims were embraced in the schedule attached to the partnership agreement between George B. Edmonds, deceased, and Gilbert Moyers, deceased, dated February 6th, 1888, and were also embraced in the list of cases marked "Exhibit B, List of Edmonds' cases," filed by said decedent Gilbert Moyers, in the course of proceedings in this cause before the auditor on the 8th day of August, 1900, the same being mentioned in said list as follows:—

6847, Jane Edge, pending,
4499, Herbert Smith, pending,
2028, Lucy A. Caldwell, pending.

Said last mentioned exhibit a true copy of which is here presented to the Court, was, as stated, filed with the auditor of this Court on said last mentioned date and contained a list of 225 cases, 74 of which were shown by said list to have been dismissed outright; while the balance were shown to have been allowed or pending. Said Moyers claimed and defendants are now claiming, before said auditor that he was and they are entitled to the expenses incurred by him in all of the cases mentioned in said list. By stipulation of counsel made in said cause and filed in the Court of Appeals of this District while said cause was last pending in that Court, on appeal from the final decree therein, it was stated as folows:

"The defendant in the Court below produced before the auditor under a reference ordered by decree of the lower court of June 13th, 1900, a list of cases which was marked "Exhibit B" and entitled "List of Edmonds' cases" which contained the names of 225 cases, which he admitted he received from George B. Edmonds, deceased, and which were embraced in said partnership agreement of February 6th, 1888.

(See p. 386, Record in the Court of Appeals.)

2. Your receivers have made an examination of the papers and dockets of the Court of Claims in said three claims with the following result:

(*a*) In the matter of the claim of J. D. Edge, administrator of Jane Edge, congressional No. 6847 it appears that down to August 29th, 1902, Gilbert Moyers appeared as attorney of record in said Court of Claims in the prosecution of said claim and as such took the testimony on behalf of the claimant and acted therein in other respects on behalf of said claimant. On August 29th, 1902, there was an appearance entered of the defendants Ida M. Moyers and Charles F. Consaul who are now the administrators of said decedent Gilbert Moyers who departed this life sometime during the month of June or July, 1903. On August 29th, 1902, a motion was filed in the matter of said claim in the Court of Claims to substitute said Ida M. Moyers and Charles F. Consaul as attorneys for the claimant, accompanied by a power of attorney to them from J. D. Edge, administrator, which motion was marked, "I consent to the allowance of above motion, Gilbert Moyers." On the same day by order of the Court, the administrator was substituted for the original claimant in whose name the case had been prosecuted up to that date. On September 4th, 1902, there was filed in said Court of Claims a further motion to substitute said Ida M. Moyers and Charles F. Consaul as attorneys for said administrator, consent to which by said Gilbert Moyers was endorsed thereon by him. There was a finding by the Court of Claims on January 5th, 1903, of $817 on behalf of the claimant.

(*b*) In the matter of the claim of Sallie J. Adams, administratrix of Herbert Smith, Congressional No. 4499, there appears in the papers on file in the Court of Claims in said case a petition in the hand-writing of the late George B. Edmonds to the Senate and House of Representatives for reference of said claim to the Court of Claims which is stamped "June 30th, 1886. Referred to the Com-

mittee on War Claims" and an additional stamp "Filed May 7th, 1888," meaning that the same had been filed in the Court of Claims on said last mentioned date. Said claim was prosecuted by Gilbert Moyers as attorney of record. On July 24th, 1901, a brief on loyalty was filed by Gilbert Moyers, the same being marked, "Ida M. Moyers, of counsel." On January 14th, 1903, a motion to withdraw the papers was filed by Gilbert Moyers on which was endorsed "I. M. Moyers and C. F. Consaul, of counsel." On February 12th, 1903, a reply brief on loyalty was filed by said Gilbert Moyers with the names of the same parties thereon as of counsel. On March 9th, 1903, the case was submitted on loyalty by the same counsel. On May 22nd, 1903, a motion was filed by Charles F. Consaul for the substitution of himself as attorney of record with "I. M. Moyers, of counsel." Said motion was endorsed "I assent to allowance of above motion. Gilbert Moyers, attorney of record" and was accompanied by power of attorney from the administratrix, Sallie J. Adams to I. M. Moyers and C. F. Consaul dated May 18th, 1903. On May 23rd, 1903, a motion was filed to substitute the administratrix for the deceased claimant by Charles F. Consaul, attorney for claimant, with I. M. Moyers, of counsel. All of the testimony in said case was taken by said Gilbert Moyers as attorney of record before the substitution of Charles F. Consaul and said I. M. Moyers as attorneys for the administratrix. All subsequent proceedings in this case on behalf of the claimant were by said Charles F. Consaul and Ida M. Moyers. On December 7th, 1903, there was a finding by the Court of Claims for the claimant in the sum of $817.

(c) In the matter of the claim of Lucy J. Eton, executrix of Lucy A. Caldwell, Congressional Nos. 2028 and 11146, your receivers report that the papers in the matter of said claim had been withdrawn from the Court of Claims where they were informed by the file clerk that the withdrawal was by said Charles F. Consaul in whose possession they were. The docket of the Court of Claims, however, shows that Gilbert Moyers and George B. Edmonds were originally the attorneys for the claimant. Appearance was filed June 24th, 1887, and power of attorney was filed September 8th, 1887. Petition for the claimant was filed September 8th, 1887. The docket further shows that subsequent proceedings were by Gilbert Moyers as attorney of record down to March 24th, 1903, when said Gilbert Moyers filed a formal appearance as attorney of record. On July 6th, 1903, a motion was filed by Lucy J. Eton to be substituted as executrix of the deceased claimant with accompanying original letters testamentary and on July 6th, 1903, a motion was filed by Ida M. Moyers and Charles F. Consaul to be substituted as attorneys of record for said Gilbert Moyers. The subsequent proceedings in said case on behalf of the claimant were by said Charles F. Consaul and said Ida M. Moyers and there was a finding on behalf of the claimant for $4200.

3. Your receivers further report that warrants or checks in settlement of said three claims will within the next few days be issued by the Treasurer of the United States and will be mailed either direct to the claimants or delivered to said Charles F. Consaul and said

Ida M. Moyers, unless the Court shall take some action to cause the same or the proceeds thereof to be delivered to your receivers.

The premises considered, your receivers respectfully request instructions from the Court in the premises.

CHAS. COWLES TUCKER,
HENRY F. WOODARD,
Receivers.

DISTRICT OF COLUMBIA, *To wit:*

We do solemnly swear that we have read the foregoing report by us subscribed and know the contents thereof; that the facts therein stated upon our personal knowledge are true and those stated upon information and belief we believe to be true.

CHAS. COWLES TUCKER.
HENRY F. WOODARD.

Subscribed and sworn to before me this 7th day of March, A. D. 1905.

[SEAL.] GEORGE E. TRALLES,
Notary Public, D. C.

Answer of Defendants.

Filed March 10, 1905.

In the Supreme Court of the District of Columbia.

Equity. No. 20802.

HORACE S. CUMMINGS, Administrator, etc.,
vs.
CHARLES F. CONSAUL and IDA M. MOYERS, Administrators, etc.

The answer of the defendants, Charles F. Consaul and Ida M. Moyers, to the petition filed in said cause and the rule issued thereon against them on the 8th day of March, 1905.

The defendants for answer to said petition say:

1st. That they are advised and believe that the subject matter of said petition and the report of the receivers therein referred to is not proper for the consideration of the court in this cause; that the complainant seeks in and by the said report and petition to have adjudicated the individual and personal rights of these defendants in and to the matters in said petition and report mentioned; that said petition is not to confined nor does it seek solely the adjustment of the alleged partnership accounts between the said Horace S. Cummings, as administrator of George B. Edmonds, deceased, and these defendants, as administrators of the estate of Gilbert Moyers, deceased; that said petition seeks to commingle the questions and, therefore is multifarious and ought not to be further considered by

this court in this proceeding, and they, upon such advice and belief, object to the further consideration thereof and move to dismiss the petition and report of the receivers, and they pray that they may have the same benefit of this objection as if the same had been taken by demurrer thereto.

2nd. For answer to the second paragraph of said petition, defendants say that they believe that the recital therein contained from the decree of this court passed in the above entitled cause is substantially correct, but for certaint*i*y they refer to the original decree and ask that it may be read in connection herewith, but they are advised and believe, and upon such advice and belief, answer; that said recital is immaterial to any of the questions raised in the said petition. And they further call the attention of the court to the fact that said decree was on the — day of July, 1904, wholly reversed by the Court of Appeals of the District of Columbia.

3rd. In answer to the third paragraph of said petition, defendants admit that the statements of the third paragraph of said petition are substantially correct, but they are also advised and believe, and answer that the contents of said paragraph are wholly immaterial to any questions raised in said petition.

4th. Answering the fourth paragraph of said petition, these respondents admit that it is their intention to collect the checks or warrants from the Treasury Department for the three claims mentioned in said paragraph and said receivers' report, and they claim the right to so collect the same, and that there are no grounds set forth in said petition, nor are there any grounds existing upon which this court can properly enjoin or restrain the defendants from so doing.

The grounds upon which these defendants claim the fees in said three cases mentioned in said petition and receivers' report as their individual property and in which the said Cummings, as administrator of said Edmonds, and these defendants, as administrators of Gilbert Moyers, have no interest whatever, are as follows:

The said Gilbert Moyers, during the last few years of his life, was ill a good deal of the time and unable to attend to business, and early in the year 1902 he largely ceased active participation in the prosecution of cases and at that time abandoned the prosecution of a number of cases which he had determined that he would not further prosecute; these defendants were, at that time, and for some time prior thereto, had been engaged in the prosecution in the Court of Claims of claims against the Government of the class herein referred to, and had assisted the said Gilbert Moyers in the prosecution of claims that he had received from the claimants. Among the cases so abandoned by the said Gilbert Moyers were two of the cases mentioned in the said petition and report, to wit, the claim in favor of J. D. Edge, administrator of Jane Edge, and the claim of Sally J. Adams, administratrix of Herbert Smith. These defendants thereupon assumed the prosecution of said claims, under the powers of attorney and contracts made by these defendants with the claimants At that time said claims were not in condition for final hearing and required considerable attention and labor in order to prepare

them for final argument; all of which these defendants did and argued the cases before the Court of Claims. The claim of the said Edge was argued and submitted to the court, and the court found in favor of the claimant in the lifetime of the said Moyers who died on the 13th day of June, 1903, but the said Moyers performed no labor or services in either of said causes after he abandoned the prosecution thereof.

In the case of Sally J. Adams, administratrix of Herbert Smith, the final brief was not submitted nor the final arguments made in the Court of Claims until August 11th, 1903, after the death of the said Gilbert Moyers and the findings of the court in favor of the claimant were made December 7th, 1903. Defendants further say that but for their services rendered in said causes said claims never would have been established and no appropriation by Congress would ever have been made therefor; that the said Gilbert Moyers had absolutely abandoned the prosecution of said claim for the reason aforesaid, together with a number of others of like kind.

In relation to the claim of Lucy J. Eaton, administratrix of Lucy A. Caldwell, deceased, these defendants had nothing to do personally with said claim in the lifetime of the said Gilbert Moyers. They do not know of their own knowledge whether it is one of the claims that the said Gilbert Moyers admitted to be embraced in the partnership arrangement between him and the said Edmonds nor do they know whether it was embraced in the list of 225 claims which it is alleged in the petition the said Moyers filed in the papers in this cause during his lifetime. They are informed and believe that that list has been lost or mislaid and they have no copy of it, but if it were embraced in said list they are informed and believe that that would not be conclusive evidence that it was a partnership case, and in this connection they call attention to the fact that in his original answer to this bill the said Moyers admitted that several claims were embraced in the partnership agreement, but the evidence and proceedings before the Auditor developed not only that they were not so embraced but that they were actually prosecuted and collected by other attorneys. And in this connection they call attention to the fact that the docket of the Court of Claims shows that the said Gilbert Moyers entered his appearance as attorney of record for the claimant in that case on the 24th day of June, 1887, more than six months prior to the date of the alleged partnership contract between him and the said Edmonds. Because of the facts above stated they do not admit that the said claim was embraced in the partnership agreement between the said Edmonds and the said Moyers.

But, even if it were embraced in that agreement, these defendants for further answer say that the said partnership has no interest whatever in the fee of defendants, in that case. These defendants had nothing to do personally with that claim during the lifetime of the said Moyers. After his death they were employed by Lucy J. Eaton, administratrix of the will of said Lucy A. Caldwell, and received a power of attorney from her authorizing them to prosecute said claim, in connection with one R. W. Haynes, another attorney practicing in the

Court of Claims. At the time of their employment and authorization in the case the claim was in a precarious condition and required considerable work and attention in order to prepare it for final argument before the court, all of which work was done by these defendants personally, except some small part which was done by the said Haynes.

These defendants are advised and believe that at the death of the said Moyers his connection with the said case absolutely ceased; that the said supposed partnership consisting of himself and Edmonds had no further connection or right in the case whatever, and that they had no right or duty as administrators of the estate of the said Gilbert Moyers to prosecute said claim, and they were required by the Court of Claims in all cases in which they appeared where the said Moyers had appeared in his lifetime to procure powers of attorney from the claimants and said court would not permit them to appear as administrators of said Moyers by virtue of the powers of attorney given him.

They are advised that the claimant had the right to employ whoever she chose to take charge of and prosecute the claim, and these defendants, together with the said Haynes, took charge of it and prosecuted it entirely independent of any power of attorney that had ever been given to the said Edmonds or the said Moyers in the lifetime of either.

5th. In answer to the fifth paragraph of said petition these defendants admit that it is true as therein stated that the administration bond given by them as administrators of the estate of the said Gilber Moyers is in the penalty of $5,000 and that the debts of said estate are considerably in excess thereof, though not as much in excess as the allegation of said petition would seem to insinuate. But these defendants for further answer to said petition say that the penalty of said bond is considerably in excess of all assets of said estate that have as yet come to the hands of these defendants as such administrators; the total assets which have thus far come to their hands being about $3,000. These defendants are both able and willing to give a larger administration bond and will do so when and if the assets shall come to their hands in sufficient amount to render such action on their part necessary. But in this connection, for further answer to said paragraph, they say that the $3421 mentioned in said petition will not come to their hands in the character of administrators of the estate of Gilbert Moyers, but they will receiver the same in their own right as their own money and funds, except only so much of the fee in the Caldwell case as the said Haynes is entitled to.

The residue of the fifth paragraph has been hereinbefore answered and they are advised that it needs no further answer in this connection.

Sixth. For answer to the sixth paragraph of this petition, these defendants deny that the said Cummings, as administrator of the said Edmonds, is the owner of one-half of said fees in the three claims, amounting in the aggregate to $3421.00, or that he is the owner of any interest therein whatever, or that he has any claim

whatever thereon, but the same is the private property and money of these defendants in their own individual capacity, except as to the share of the fee to the said Haynes as hereinbefore stated.

Seventh. The defendants for further answer to said petition say that they are advised and believe that there are no facts or grounds shown in said petition that would justify the interference of this court in granting any restraining order against these defendants receiving the drafts or warrants from the Treasury Department and collecting the same in payment of the three claims mentioned in said petition; that even if it were true as alleged in said petition that complainant had any interest or claim in them whatever, which these defendants again deny, that interest could only be determined in a suit to be brought by the said Cummings against them individually for the assertion of said claim, and that such subject matter is improper to be introduced in this suit; that an injunction or restraining order, or any order whatever in this cause in relation to the drafts or warrants or checks or money to be paid or delivered by the Government in payment of said claims would be and operate as a great hardship not only upon these defendants, but also upon the claimants and the said Haynes, who are entitled to the prompt payment of the money due to them; that any injunction or other order passed in this cause in relation to said drafts or money would lead to complications with the Treasury Department, and greatly delay the delivery of said drafts or payment of said money to the claimants or any one else.

And the said defendants also answer that any restraining order or other order in this cause in relation to said drafts would be improper for the reason that they the said defendants are before this court only as administrators of the estate of the said Gilbert Moyers and not in their individual capacity and claim no interest in such warrants or the proceeds thereof as such administrators but only individually.

These defendants, for further answer, say that they have received from the Treasury of the United States a draft for $1826 in payment of the claim in favor of Sally J. Adams, administratrix of Herbert Smith, deceased, and they have forwarded the same to the claimant, through a bank, accompanied by their draft on the claimant for $608.66 which is their fee by agreement with the claimant.

IDA M. MOYERS.
CHARLES F. CONSAUL.

DISTRICT OF COLUMBIA, *To wit:*

Charles F. Consaul and Ida M. Moyers, being first duly sworn, depose and say that they are the respondents named in the foregoing answer by them subscribed; that they have read said answer and know the contents thereof, and that the statements therein made of their own knowledge are true, and those therein made upon information and belief they believe to be true.

IDA M. MOYERS.
CHARLES F. CONSAUL.

Subscribed and sworn to before me this 10th day of March, A. D. 1905.

WALTER F. DONALDSON,
Notary Public, D. C.

Filed Jan. 31, 1908. J. R. Young, Clerk.

THE UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable the Justices of the Supreme Court of the District of Columbia, Greeting:

Whereas in a certain suit in said Supreme Court between Horace S. Cummings, Administrator of George B. Edmonds, Complainant, and Gilbert Moyers, defendant, Equity No. 20802, which suit was removed to the Court of Appeals of the District of Columbia by virtue of an appeal, agreeably to the act of Congress in such case made and provided, a diminution of the record and proceedings of said cause has been suggested, to wit:

"1. Petition of Horace S. Cummings filed in the Supreme Court of the District of Columbia March 8th, 1905.

2. Report of Receivers filed in the Supreme Court of the District of Columbia March 8th, 1905.

3. Answer of defendants filed in the Supreme Court of the District of Columbia March 10th, 1905."

You, therefore, are hereby commanded that, searching the record and proceedings in said cause, you certify what omissions, to the extent above enumerated, you shall find to the said Court of Appeals, so that you have the same, together with this writ, before the said Court of Appeals forthwith.

Witness the Honorable Seth Shepard, Chief Justice of the said Court of Appeals, the 31st day of January, in the year of our Lord one thousand nine hundred and eight.

[Seal Court of Appeals, District of Columbia.]

HENRY W. HODGES,
Clerk of the Court of Appeals of the District of Columbia.

[Endorsed:] Court of Appeals of the District of Columbia. No. 1778, Jan'y Term, 1908. Charles F. Consaul *et al.*, Appellants, *vs.* Horace S. Cummings, Administrator of George B. Edmonds, Deceased. Writ of Certiorari. Filed Jan. 31, 1908. J. R. Young, Clerk.

Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, *District of Columbia, ss:*

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify in obedience to the Writ of Certiorari

hereto attached and returned herewith, that the foregoing are true and correct copies of the

Petition of Horace S. Cummings, filed March 8th, 1905;

Report of Receivers, filed March 8th, 1905, and

Answer of Defendants, filed March 10th, 1905;

containing matter omitted by inadvertence from the record heretofore transmitted to the Court of Appeals of the District of Columbia.

In testimony whereof I hereunto subscribe my name and affix the seal of said Court, at the city of Washington, in said District, this 31st day of January, A. D. 1908.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG, *Clerk.*

[Endorsed:] No. 1778. Charles F. Consaul and Ida Moyers, Administrators of Gilbert Moyers, deceased, *vs.* Horace S. Cummings, Administrator of George B. Edmonds, deceased. Return to Writ of Certiorari. Court of Appeals, District of Columbia. Filed Jan. 31, 1908. Henry W. Hodges, Clerk.

TUESDAY, *February 4th*, A. D. 1908.

No. 1778.

CHARLES F. CONSAUL and IDA M. MOYERS, Administrators of Gilbert Moyers, Deceased, Appellants,
vs.
HORACE S. CUMMINGS, Administrator of George B. Edmonds, Deceased.

and

No. 1779.

HORACE S. CUMMINGS, Admr., Appellant,
vs.
CHARLES F. CONSAUL and IDA M. MOYERS, Administrators.

The argument in the above entitled causes was commenced by Mr. C. F. Consaul, attorney for the appellants in No. 1778 and for the appellees in No. 1779, and was continued by Mr. C. C. Tucker, attorney for the appellee in No. 1778 and for the appellant in No. 1779.

WEDNESDAY, *February 5th*, A. D. 1908.

No. 1778.

CHARLES F. CONSAUL and IDA M. MOYERS, Administrators of Gilbert Moyers, Deceased, Appellants,
vs.
HORACE S. CUMMINGS, Administrator of George B. Edmonds, Deceased.

and

No. 1779.

HORACE S. CUMMINGS, Admr., Appellant,
vs.
CHARLES F. CONSAUL and IDA M. MOYERS, Administrators.

The argument in the above entitled causes was concluded by Mr. C. F. Consaul, attorney for the appellants in No. 1778 and for the appellees in No. 1779.

On motion the appellee in No. 1778 and the appellant in No. 1779 is allowed to file memoranda herein if so advised.

No. 1778.

CHARLES F. CONSAUL and IDA M. MOYERS, Administrators of Gilbert Moyers, Deceased, Appellants,
vs.
HORACE S. CUMMINGS, Administrator of George B. Edmonds, Deceased,

and

No. 1779.

HORACE S. CUMMINGS, Adm'r, Appellant,
vs.
CHARLES F. CONSAUL and IDA M. MOYERS, Administrators.

Opinion.

Mr. Chief Justice SHEPARD delivered the opinion of the Court:

On September 16, 1899, Horace S. Cummings, as administrator of the estate of George B. Edmonds, deceased, filed a bill against Gilbert Moyers for an account and settlement of the affairs of a special partnership alleged to have been entered into between said Edmonds and said Moyers for the prosecution of certain claims against the United States. The matter of the account was referred to the auditor, who filed his report August 20, 1902, stating a balance due Edmonds for his share of fees collected on said claims to that time of $10,601.04. Defendant's exceptions to the report, save as to the collection in the case of R. M. Johnson, administrator, were overruled, and decree was entered accordingly. Defendant Moyers having died after the entry of the decree, his administrators made themselves parties and prosecuted an appeal to this court.

In that appeal it was held that there was a special partnership agreement including the cases in the auditor's report as confirmed; that the same had not been abandoned by Edmonds; that Moyers was not entitled to claim any compensation for special services. On those points, the exceptions were held to have been properly overruled. But it was held that there was error in refusing credit to Moyers for expenses, under the agreement, in unsuccessful as well as successful cases; and also in refusing interest on the sum of $1,470 shown to have been advanced to Edmonds by Moyers. For these errors the decree was reversed with direction to refer the account to the auditor to ascertain the said expenses, and restate the account allowing the defendant credit therefor as well as for the interest aforesaid. Consaul v. Cummings, 24 App. D. C., 36.

Jurisdiction of the cause having been retained in the court below in order to take a further account in relation to collections made in alleged partnership cases after the first reference, the auditor made a supplemental report on January 5, 1904, relating to some of these additional claims which he found to be embraced in said agree-

ment, to which exceptions were filed by the defendants. On November 7, 1905, reference was again made to the auditor directing him to take into account the credits for expenses and interest as stated in the former opinion of this court, and also to inquire into and report further as to the claim of Johnson administrator being a partnership collection, and also as to credits claimed for fees paid local attorneys in two cases stated in the second report before referred to. The report of the auditor filed May 1, 1906, restated the account, charging Moyers with the amount stated in the first account, and crediting him with the expense and interest aforesaid. He restated also the second account reported January 5, 1904, making allowance of credit for parts of fees paid by Moyers out of collection in case of Thomas Kidd. The complainant and defendant excepted to certain items in this report. Other claims collected after the second reference were also referred to the auditor for inquiry and report. The report on these was filed December 21, 1906, and shows their inclusion in the partnership agreement, and a balance on account of their collection, due the complainant. Another report was made January 4, 1907, relating to a claim of Thomas Kidd in which one Barber, intervenor, claimed a fee. Allowing this fee, the remainder of the collection was reported as being a partnership account, and one-half of the same was allowed the complainant. Exceptions to these reports came on to be heard January 8, 1907, on behalf of both parties. These were each overruled, and a decree entered confirming the several reports. After directing payment by the receivers, who had been appointed to receive certain of the funds contained in the first account, to the complainant of certain amounts under the first reports as restated, the defendants were ordered to pay the complainant the balance of $10,149.63. Both parties have appealed, and the two appeals will be considered together as constituting one case, though separately docketed. That of the defendants will first be considered.

1. The first, second, third, fourth, and fifth assignments of error seek to raise questions that were determined on the first appeal, and must be regarded as settled thereby.

2. The sixth assignment relates to the claim of the estate of Lucy A. Caldwell. It is sufficient to say of this claim that it appears as a partnership claim in the list furnished by defendant Moyers as comprising the Edmonds cases that had been prosecuted by him. It appears from the auditor's report and the evidence referred to therein, that the claim was prosecuted by Moyers until April, 1903. The administrators, Consaul and Ida Moyers, the latter being the daughter of defendant Moyers, were assistants in the latter's office. They were both attorneys admitted to practice in the Court of Claims at and before that time, and assisted Gilbert Moyers. Mrs. Caldwell died, and in July, 1903, her executrix retained one Ralph W. Haynes in the case and gave him an order to Moyers to deliver all the papers to Haynes for the further prosecution of the claim. Haynes agreed, however, to join Moyers with him in the prosecution of the claim. Moyers died June 13, 1903, with the case depending. Haynes then procured a power of attorney to himself and

Consaul and Ida Moyers authorizing them to prosecute the case. Haynes had entered an appearance in the case, and secured the substitution of the executrix as party plaintiff, and thereafter Consaul and Ida M. Moyers were entered by him as counsel for claimant. They filed a brief and made an oral argument. When the collection was made the fee of $1,800 was divided as follows: Haynes received $750 and Consaul and Moyers $1,050.

One-half of the last amount was stated in the account as due the plaintiff. It appears from the evidence that the recovery in this case was largely due to the services of Consaul and Moyers, after the death of Gilbert Moyers, whose brief in the case was apparently insufficient. The question presented is whether, because they became the administrators of Gilbert Moyers, their services as attorneys were performed on his account.

The original contract was with Edmonds who associated Gilbert Moyers with him. The client ratified this employment of Moyers on her account by acquiescence. And while, after the death of Edmonds, her executrix might have transferred the prosecution of the claim to another, as she did, Gilbert Moyers would have been entitled to claim compensation for services rendered to that date, one-half of which would inure to the benefit of Edmonds' estate. Death finally ended Moyers' connection with the case. By consent of the client, his administrators might have been permitted to carry the litigation to a termination. But it does not appear that they did undertake to carry it on as administrators. Being attorneys they were retained by Haynes to prosecute the case which they did with success. As such they were entitled to compensation as well as Haynes, whose fee has been recognized as allowable to him. We think that Consaul and Moyers must be regarded as having prosecuted the case to final determination, not as administrators of Gilbert Moyers, but as attorneys for the claimant. We are of the opinion, therefore, that the auditor should have allowed to complainant, not one-half of the fee received by Consaul and Moyers, but only so much thereof as had been earned by Gilbert Moyers up to the time of his death. As Consaul and Moyers received more than Haynes, it is probable that this may have been taken into consideration in the division of the fees, in which they received $300 more than Haynes. Moreover, Consaul testified that the services rendered in the case after the death of Gilbert Moyers amounted to not less than three-fourths of the whole.

3. The seventh assignment of error relates to the claims of Jane Edge and Herbert Smith, both of which, also, are contained in Moyers' list of the Edmonds cases. The contention is that these two cases come within the rule that has been applied in the Caldwell case above considered. The facts of the cases are, however, essentially different. The testimony shows that on November 21, 1901, Gilbert Moyers, Ida M. Moyers, and C. F. Consaul entered into an agreement whereby the two last named agreed to contribute their services to Gilbert Moyers in the prosecution of his business generally, beginning January 1, 1902, who was to defray all the incidental expenses. During the year 1902 Gilbert Moyers was to have

one-half of all fees, the other half to go to his associates. After 1902 they were to receive two-thirds and Gilbert Moyers one-third of all fees, and the expenses were to be paid in the same proportions.

The two claims of Edge and Smith had been prosecuted by Gilbert Moyers alone before this agreement was made. It was attempted to be shown that Gilbert Moyers abandoned the cases in 1902 because of the interest claimed on behalf of Edmonds, and new contracts were secured with the parties by Consaul and Ida M. Moyers. (Contract with Edge, August 25, 1902, and with Smith's administratrix May 18, 1903.) In the Edge case it appears that Gilbert Moyers wrote to the administratrix, enclosing the power of attorney and fee agreement with Consaul and Moyers for signature. He did not inform the administratrix that he had abandoned the case. On the contrary, he said: "As I. M. Moyers and C. F. Consaul, who are associated with me, have filed the previous briefs in this case, are familiar with all the details of it, and will have immediate personal charge of the conduct of the case before the court, the enclosed power of attorney to them is all right." Substantially the same course was pursued with the administratrix of Smith's estate on March 18, 1903. As these cases were pending when the agreement between the attorneys was made, they were governed thereby. Moyers had the right to make an agreement with his associates for a division of his part of the fees in the case, and in consideration thereof it became the duty of his associates to prosecute the same to the end. And if they rendered material services after the death of Moyers, any claim they would have for additional fees would be against his portion, a question that is not involved here. But they could not, under such conditions, appropriate Edmonds' portion also. We agree with the auditor that one-half of the fees collected in each case belongs to Edmonds; and, consequently, the court did not err in overruling the exception to their allowance in the account stated.

4. The eighth assignment of error, relating to the claims of Caldwell, Edge, and Smith, need not be considered, as the questions have been determined under the preceding assignment.

5. The ninth assignment of error relates to the refusal of the court to reopen the entire case for the purpose of introducing in evidence a letter alleged to have been written by Edmonds to Moyers December 17, 1889, containing a promise to furnish a list of his (Edmonds') claims, and of redetermining the question whether the first adjudicated claims in the case were really partnership cases. Ordinarily, it is within the discretion of the court to reopen a case and permit additional testimony to be taken, and error can not be assigned on his refusal to do so, unless the circumstances indicate an abuse of that discretion. The court was clearly right in not permitting the first report of the auditor to be reheard in respect of matters that had been determined on the first appeal to this court. That appeal was prosecuted by the defendants and they are now concluded as to matters therein determined.

The letter was admitted in evidence on the hearing of the additional claims. To the argument founded on its weight as regards

the Caldwell, Edge, and Smith claims, it is a sufficient reply that those claims were admitted by Moyers to have been among those turned over to him by Edmonds under their agreement.

6. The tenth assignment is to the effect, that "it was error, assuming the complainant to be entitled to take anything in this suit, to hold that the money paid to W. A. Montgomery for services as local counsel should not be deducted from the total fee in the claim of the executors of Kidd, before any division of said fee between complainant and the estate of Moyers."

The Kidd claim was one of those prosecuted under the terms of the special partnership, and at that time Montgomery had a contract for 10 per cent of the fee for his services in taking depositions in support of it. In November, 1900, as shown by the testimony of Miss Ida M. Moyers, who was then in her father's office, she sent a contract to be executed by the heirs of Kidd, giving Gilbert Moyers 50 per cent of the claim as a fee. This was done, as explained by her, because she had found no other fee contract. This contract was executed and returned, but before execution it was interlined so as to give 15 per cent of the recovery to said Montgomery. The entire fee collected in this case was $6,730 of which Montgomery received 30 per cent. The auditor reported that the amount received by Montgomery in excess of the 10 per cent under his original contract, was chargeable to Moyers. We see no reason to doubt that the court was right in overruling the exception to the report. If Moyers saw proper to make the additional allowance to Montgomery instead of holding him to his original contract, he had no right to pay any part of it out of the share coming to Edmonds. There was no new employment and contract in this case as in that of Caldwell, before considered. The claim was prosecuted in the name of the executors of Kidd, and the parties signing the contract, as heirs of Kidd, had no right to control the case. Whatever interest they had as next of kin of the deceased claimant, was subordinate to the right of her executors. The executors had acquiesced in the management of the case by Moyers, and their liability was under the original contract with Edmonds with whom Moyers was associated.

7. The eleventh assignment claims error in the report in not crediting Moyers in the statement of the account with 25 per cent of the collection on the claim of Isaiah Beans. The fee collected in this case was $640, of which Thomas received $320. The auditor charged the whole of this fee to Moyers giving no credit for the amount paid Thomas. The court sustained the defendant's exception to this and it was referred back for ascertainment of the proper amount payable to Thomas out of the fee aforesaid. The auditor reported that $100 was a reasonable compensation to Thomas for the services performed by him, one-half of which was chargeable to the account of Edmonds. We are not convinced that there was error in this conclusion.

8. The twelfth assignment relates to three claims of Ernest Neill, administrator of Joseph Egner, of William Goddard, and of Joel C. Johnson, administrator of Richard W. Johnson.

(1) We see no reason to doubt the conclusion of the auditor that

the Egner and Goddard claims were among those included in the partnership agreement between Edmonds and Moyers, and hence that the fees were divisible in accordance therewith. As this is the only exception to the report as to their claims, there was no error in overruling the same.

(2) The Johnson claim was one of those reported in the auditor's statement of account herein filed August 22, 1902, but it is there stated as claim of R. M. Johnson, administrator of Samuel Heard. The fee collected was found to be $1,052.50, half of which was allowed to complainant in the statement of the account. The court sustained an exception to this item and the same was referred back to the auditor to report on the claim as that of Joel C. Johnson, administrator of the estate of Richard W. Johnson. In his report filed May 1, 1906, the auditor stated this claim as above named, to be one of the partnership cases, and found the fee collected was $492, one-half of which was allowed to complainant. It appears that in the first report the case of Johnson administrator of Heard was confounded with the case of Johnson administrator of Johnson. There is no such mistake in the later report. This case is contained in the Edmonds list, and it appears that he had a contract for the fee therein, dated March 18, 1886, and authorizing him to prosecute the claim; also that he prepared and presented the petition to Congress for reference. The records show that Gilbert Moyers entered his appearance in the case in the Court of Claims June 25, 1890. Moyers, who testified concerning this claim on May 18, 1900, was not certain whether it was one of those received through the Edmonds contract. He said he thought it was not; but he failed to produce any contract of his own with the party, or any documents to show an independent connection with the case. We think the proof was sufficient to support the auditor's finding that it was a partnership case.

9. The thirteenth assignment of error calls attention to an error in the statement of the account in the report of May 1, 1906. While this error was not discovered, and no action in respect thereto was asked of the court on the exceptions to the report, the point has been waived by the appellee, who consents to the correction now. It appears, as before stated, that in the statement of the account in the report of August 20, 1902, the auditor charged the defendant with $526.25, the same being one-half of a fee collected by defendant in the case of Johnson, administrator of Heard. To this an exception was sustained. In restating the account in the report of May 1, 1906, the auditor, by mistake, failed to deduct this sum from the balance before reported as due by defendant. The effect of this mistake is, that the said sum of $526.25 has been adjudged payable by defendant, in addition to the sum of $246 since charged to him on account of the fee collected in the case of Johnson, administrator of R. W. Johnson. It follows that the decree must be corrected so as to eliminate the said charge of $526.25, and interest thereon.

10. The fourteenth assignment relates to the fees allowed the receivers for their services in the matter of certain collections. The auditor's report on the account of the receivers is not in the record, and there is nothing by which we can determine the nature and

value of the services for which the allowance was made. It is unnecessary to consider the statement of appellee that the exception to this item was abandoned in the court below before the entry of an order on certain exceptions that were then presented and considered.

11. The fifteenth assignment is to the effect that it was error to allow complainant interest on fees due him until after the entry of a final decree ascertaining the balance due him on settlement of the account. Interest was allowed on the items of the account stated August 20, 1902, and the same has been done in the case of all subsequent items. No exception was taken to the first report on this ground, and the only question raised as to interest was the failure to allow interest to Moyers on advances made by him to Edmonds. When the case was before us on the appeal from the confirmation of that report, it was said in the opinion: "The appellants offer no objection to this award of interest, but complain that a similar award was not made respecting the sum of $1,470 found to have been advanced by Moyers to Edmonds in 1892." Consaul v. Cummings, 24 App. D. C., p. 49. The decree was then reversed and the interest claimed on the said advance was ordered to be allowed in the restatement of the account. No exception to the subsequent reports on account of the allowance of interest was made in the court below, and the question can not now be entertained.

12. An exception was taken to the report of the auditor filed January 4, 1904, to the allowance of a fee of $231 as collected in the claim of John W. Fletcher. This was not embraced in the assignment of errors as presented in the printed argument of appellants, but was incidentally presented in the oral argument. It has been argued in additional briefs presented by both parties. That this was a partnership claim seems settled by its inclusion in the list of such claims filed by Moyers before his death. It is also contended that the entire amount of collection on this claim was $231, the whole of which, instead of the half thereof, $115.50, has been charged to Moyers as having been received as a fee. That this mistake was made is conceded by the appellee. But it is contended by the appellee that this is charged to the receivers in their account; and may be corrected when they file their final report. We are not advised by the record of facts sufficient to enable us to determine this point. It appears, therefore, that the defendants have been charged as collecting a fee of $231 in the Fletcher case when in fact they collected but $115.50. Their exception to the report to that extent should have been sustained. This will not prevent the correction of the receivers' account on final settlement if the facts justify the same for their protection.

13. On the appeal, No. 1779, prosecuted by Cummings from the decree overruling certain exception by him to the report of the auditor, several errors have been assigned.

These relate to the allowance of credit to Moyers for expenses in the Edmonds cases, and for fees that have been paid to special counsel in several of said cases.

We think it unnecessary to discuss these in detail. Some of them have been mentioned in considering the exceptions of the adverse

parties that have been disposed of. We find no sufficient ground for disturbing the report in these several particulars.

So much of the decree as has been appealed from by Cummings in case No. 1779 will be affirmed, with costs.

14. The decree appealed from by Consaul and Moyers, appellants in No. 1778, will be affirmed in all respects save as regards (1) the error found in the equal division of the fee collected by Consaul and Moyers in the case of Lucy A. Caldwell; (2) the one charged in the case of John W. Fletcher, and (3) the mistake of the auditor in not eliminating from the last statement of the account the item of $526.25 improperly charged on account of fee collected in the case of Johnson, administrator of Heard. As to these three items it will be reversed, and the case will be remanded with direction to restate the account of the date of the decree, correcting the error aforsaid and ascertaining the proper proportion of the fee collected by Consaul and Moyers in the Caldwell case, to be allowed to Gilbert Moyers and divided with Edmonds, as well as correcting the charge made of the fee in the case of John W. Fletcher. It is expedient to make the final account embrace all of the collected claims in litigation and conclude the settlement.

The costs incurred on appeal in No. 1778 will be taxed one-half to each party respectively.

Modified and affirmed.

TUESDAY, *March 10th, A. D.* 1908.

No. 1778. January Term, 1908.

CHARLES F. CONSAUL and IDA M. MOYERS, Administrators of Gilbert Moyers, Deceased, Appellants,

vs.

HORACE S. CUMMINGS, Administrator of George B. Edmonds, Deceased.

Appeal from the Supreme Court of the District of Columbia.

This cause came on to be heard on the transcript of the record from the Supreme Court of the District of Columbia, and was argued by counsel. On consideration whereof, it is now here ordered, adjudged and decreed by this Court that the decree of the said Supreme Court in this cause be, and the same is hereby, affirmed in all respects save as regards (1) the error found in the equal division of the fee collected by Consaul and Moyers in the case of Lucy A. Caldwell, (2) the one charged in case of John W. Fletcher, and (3) the mistake of the Auditor in not eliminating from the last statement of the account the item of $526.25 improperly charged on account of fee collected in the case of Johnson, administrator of Heard. As to these three items it will be reversed; and the case will be remanded with direction to restate the account to the date of the decree, correcting the error aforesaid and ascertaining the proper proportion of the fee collected by Consaul and Moyers in the Caldwell case, to be allowed to Gilbert Moyers, and divided with Edmonds, as well as correcting the charge made of the fee in the case of John W. Fletcher. The costs will be taxed one-half to each party respectively.

Per MR. CHIEF JUSTICE SHEPARD.

March 10, 1908.

In the Court of Appeals of the District of Columbia.

No. 1980.

CHARLES F. CONSAUL ET AL., Adm'rs, &c., Appellants,
vs.
HORACE S. CUMMINGS, Adm'r, &c.

a Supreme Court of the District of Columbia.

Equity. No. 20802.

HORACE S. CUMMINGS, Administrator of Estate of George B. Edmonds, Dec'd, Complainant,
vs.
CHARLES F. CONSAUL and IDA M. MOYERS, Administrators of Estate of Gilbert Moyers, Dec'd, Defendants.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, That in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

1 *Mandate.*

Filed March 28, 1908.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable the Justices of the Supreme Court of the District of Co-
[SEAL.] lumbia, Greeting:

Whereas, lately in the Supreme Court of the District of Columbia, before you, or some of you, in a cause between Horace S. Cummings, Administrator of the Estate of George B. Edmonds, deceased, complainant, and Charles F. Consaul and Ida M. Moyers, Administrators of the Estate of Gilbert Moyers, deceased, defendants, Equity No. 20,802, wherein the decree of the said Supreme Court entered in said cause on the 8th day of January, A. D. 1907, is in the following words, viz:

"This cause coming on to be heard upon the report of the Auditor of the Court filed May 1st, 1906 and the exceptions thereto of the complainant and the defendants; upon the report of the Auditor filed December 21st, 1906, and the exceptions thereto of the defendants, and upon the report of the Auditor filed January 4th, 1907, and the exceptions thereto of the complainant, and the parties having consented to the immediate hearing of said exceptions it is, by the court, this 8th day of January, 1907, adjudged, ordered
2 and decreed as follows, to wit:

"1. That each and every of said exceptions be, and the same is hereby, overruled, and said reports be, and the same are hereby, finally ratified and confirmed.

"2. That the complainant, as shown by the said report of the Auditor filed May 1, 1906, is entitled to recover from the defendants, as administrators of the estate of Gilbert Moyers, the sum of $12,813.74, being the sum found to be due the complainant, as of September 16, 1899, namely, $8,906.68, with interest thereon to the date hereof; also the sum of $311.72, being the sum found to be due the complainant on account of the fee collected by defendants' intestate, Gilbert Moyers, in the case of Joel C. Johnson, Administrator of Richard W. Johnson, namely, $246, with interest thereon from July 25, 1902, to the date hereof; and also the sum of $964.99 being the sum found to be due the complainant by the said report of the Auditor filed December 21st, 1906, or a total of $14,090.45, with interest until paid.

"3. That of the sum of $480.10 remaining of the $682 heretofore retained by the receivers herein pending the determination of the claim of George M. Barber, intervenor, as shown by the said report of the Auditor filed January 4th, 1907, after payment of the sum of $201.90 to said Barber as directed by the order of the Court made December 26th, 1906, the complainant is entitled to one-half, namely, $240.05 and the defendants to one-half, namely, $240.05.

3 "4. That of the balance of the sum of $6,430.82, in the hands of said receivers, as shown by said report of said Auditor filed May 1, 1906, after deducting $152, costs of references and also said $682 retained by said receivers distribution of which is hereinbefore provided for, which said balance amounts to $5,596.82, the complainant, as shown by said last mentioned report, is entitled to the sum of $1,896.05 and the defendants to the sum of $3,700.77.

"5. That the said receivers be, and they are hereby directed to pay over forthwith to the said complainant the sums of $1,896.05 and $240.05 found to be due by the Auditor's reports filed May 1, 1906, and January 4th, 1907, and also the sums of $3,700.77 and $240.05 found to be due the defendants by said last mentioned reports, which said sums of $3,700.77 and $240.05 shall, when paid, be credited upon the sums of $14,090.45, due the complainant from the defendants according to the provisions of Paragraph 2 hereof, leaving a balance due the complainant from the defendants on account thereof of $10,149.63, which last mentioned sum the com-

plainant shall recover from the defendants as administrators as aforesaid, as of the date hereof, together with the costs of suit, to be taxed by the Clerk, and have execution therefor as at law.

"6. That this cause be, and the same is hereby retained, and the right saved and reserved to the complainant to apply to this Court from time to time for an order or orders for the payment of
4 such other and further sums of money as have or shall come into the hands of the defendants, as administrators of Gilbert Moyers, deceased, on account of the partnership heretofore adjudged to have existed between the said deceased and the said George B. Edmonds, deceased, or into the hands of the said receivers, and which may or shall be due the complainant, as administrator of said George B. Edmonds, by reason of said partnership.

HARRY M. CLABAUGH,
Chief Justice."

as by the inspection of the transcript of the record of the said Supreme Court, which was brought into the Court of Appeals of the District of Columbia by virtue of an appeal, agreeably to the Act of Congress in such case made and provided, fully and at large appears.

And whereas, in the present term of January, in the year of our Lord one thousand nine hundred and eight, the said cause came on to be heard before the said Court of Appeals on the said transcript of record, and was argued by counsel:

On consideration whereof, It is now here ordered adjudged and decreed by this Court that the decree of the said Supreme Court in this cause be, and the same is hereby, affirmed in all respects save as regards (1) the error found in the equal division of the fee collected by Consaul and Moyers in the case of Lucy A. Caldwell, (2) the one charged in case of John W. Fletcher, and (3) the mistake of the Auditor in not eliminating from the last statement of the account the item of $526.25 improperly charged on account
5 of fee collected in the case of Johnson, Administrator of Heard. As to these three items it will be reversed. The costs will be taxed one-half to each party respectively; and that the said defendants Charles F. Consaul and Ida M. Moyers, Administrators of Gilbert Moyers, deceased, recover against the said complainant One hundred and seventy-eight dollars and eighty-two cents for their costs herein expended and have execution therefor.

And it is further ordered that this cause be, and the same is hereby remanded to the said Supreme Court with direction to restate the account to the date of the decree, correcting the error aforesaid and ascertaining the proper proportion of the fee collected by Consaul and Moyers in the Caldwell case, to be allowed to Gilbert Moyers, and divided with Edmonds, as well as correcting the charge made of the fee in the case of John W. Fletcher.

March 10, 1908.

You, therefore, are hereby commanded that such execution and further proceedings be had in said cause, in conformity with the opinion and decree of this Court, as according to right and justice and the laws of the United States ought to be had, the said appeal notwithstanding.

Witness the Honorable Seth Shepard, Chief Justice of said Court of Appeals, the 28th day of March in the year of our Lord one thousand nine hundred and eight.

HENRY W. HODGES,
Clerk of the Court of Appeals of the District of Columbia.

Costs of Defendants.

Clerk	$19.57
Printing Record	$159.25
	$178.82

6 *Mandate.*

Filed March 28, 1908.

UNITED STATES OF AMERICA, *ss:*

[SEAL.] The President of the United States of America to the Honorable the Justices of the Supreme Court of the District of Columbia, Greeting:

Whereas, lately in the Supreme Court of the District of Columbia, before you, or some of you, in a cause between Horace S. Cummings, Administrator of the Estate of George B. Edmonds, deceased, complainant, and Charles F. Consaul and Ida M. Moyers, Administrators of the Estate of Gilbert Moyers, deceased, defendants, Equity No. 20,802, wherein the decree of the said Supreme Court entered in said cause on the 8th day of January, A. D. 1907, is in the following words, viz:

"This cause coming on to be heard upon the report of the Auditor of the Court filed May 1st, 1906, and the exceptions thereto of the complainant and the defendants; upon the report of the Auditor filed December 21st, 1905, and the exceptions thereto of the defendants, and upon the report of the Auditor filed January 4th, 1907, and the exceptions thereto of the complainant, and the parties having consented to the immediate hearing of said exceptions it is, by the court, this 8th day of January, 1907, adjudged, ordered
7 and decreed as follows, to wit:

"1. That each and every of said exceptions be, and the same is hereby, overruled, and said reports be, and the same are hereby, finally ratified and confirmed.

"2. That the complainant, as shown by the said report of the Auditor filed May 1, 1906, is entitled to recover from the defendants, as administrators of the estate of Gilbert Moyers, the sum of $12,813.74, being the sum found to be due the complainant, as of September 16, 1899, namely, $8,906.68, with interest thereon to the date hereof; also the sum of $311.72, being the sum found to be due the complainant on account of the fee collected by defendants' intestate, Gilbert Moyers, in the case of Joel C. Johnson, Administrator of Richard W. Johnson, namely, $246, with interest thereon from July 25, 1902, to the date hereof; and also the sum of $964.99

being the sum found to be due the complainant by the said report of the Auditor filed December 21st, 1906, or a total of $14,090.45, with interest until paid.

"3. That of the sum of $480.10 remaining of the $682 heretofore retained by the receivers herein pending the determination of the claim of George M. Barber, intervenor, as shown by the said report of the Auditor filed January 4th, 1907, after payment of the sum of $201.90 to said Barber as directed by the order of the court made December 26th, 1906, the complainant is entitled to one-half, namely, $240.05 and the defendants to one-half, namely, $240.05.

8 "4. That of the balance of the sum $6,430.82, in the hands of said receivers, as shown by said report of said Auditor filed May 1, 1906, after deducting $152, costs of references and also said $682 retained by said receivers distribution of which is hereinbefore provided for, which said balance amounts to $5,596.82, the complainant, as shown by said last mentioned report, is entitled to the sum of $1,896.05 and the defendants to the sum of $3,700.77.

"5. That the said receivers be, and they are hereby directed to pay over forthwith to the said complainant the sums of $1,896.05 and $240.05 found to be due by the Auditor's reports filed May 1, 1906, and January 4th, 1907, and also the sums of $3,700.77 and $240.05 found to be due the defendants by said last mentioned reports, which said sums of $3,700.77 and $240.05 shall, when paid, be credited upon the sum of $14,090.45, due the complainant from the defendants according to the provisions of Paragraph 2 hereof, leaving a balance due the complainant from the defendants on account thereof $10,149.63, which last mentioned sum the complainant shall recover from the defendants, as administrators as aforesaid, as of the date hereof, together with the costs of suit, to be taxed by the Clerk, and have execution therefor as at law.

"6. That this cause be, and the same is hereby retained, and the right saved and reserved to the complainant to apply to this Court from time to time for an order or orders for the payment of

9 such other and further sums of money as have or shall come into the hands of the defendants, as administrators of Gilbert Moyers, deceased, on account of the partnership heretofore adjudged to have existed between the said deceased and the said George B. Edmonds, deceased, or into the hands of the said receivers, and which may or shall be due the complainant, as administrator of said George B. Edmonds, by reason of said partnership.

HARRY M. CLABAUGH,
Chief Justice."

as by the inspection of the transcript of the record of the said Supreme Court, which was brought into the Court of Appeals of the District of Columbia by virtue of an appeal, agreeably to the Act of Congress in such case made and provided, fully and at large appears.

And whereas, in the present term of January, in the year of our Lord one thousand nine hundred and eight, the said cause came on to be heard before the said Court of Appeals on the said transcript of record, and was argued by counsel:

On consideration whereof, It is now here ordered adjudged and decreed by this Court that the decree of the said Supreme Court in this cause be, and the same is hereby, affirmed with costs; and that the said defendants recover against the said complainant, Horace S. Cummings, Administrator of George B. Edmonds, deceased, for their costs herein expended and have execution therefor.

March 10, 1908.

10 You, therefore, are hereby commanded that such execution and proceedings be had in said cause, as according to right and justice and the laws of the United States ought to be had, the said appeal notwithstanding.

Witness the Honorable Seth Shepard, Chief Justice of said Court of Appeals, the 28th day of March in the year of our Lord one thousand nine hundred and eight.

Costs of Defendants.

Clerk ..... $
Attorney ..... $ Paid.
Printing Record ..... $

HENRY W. HODGES,
Clerk of the Court of Appeals
of the District of Columbia.

Supreme Court of the District of Columbia.

WEDNESDAY, *April* 29, 1908.

The Court resumes its session pursuant to adjournment, Mr. Chief Justice Clabaugh presiding.

No. 20802, Equity Docket 47.

HORACE S. CUMMINGS, Administrator, etc.,
vs.
CHARLES F. CONSAUL ET AL., Administrators, etc.

Upon consideration of the mandate of the Court of Appeals of the District of Columbia upon the appeal to that Court of the said defendants, it is by the Court this 29th day of April, 1908, ordered that the said cause be and the same is hereby re-referred to the Auditor with directions to restate the account of the parties in accordance with the directions of said mandate and to report to

11 this Court accordingly; said re-statement of said account to be made upon the testimony already taken in said cause and

such additional testimony as either of the parties hereto may adduce.

HARRY M. CLABAUGH,
Chief Justice.

Auditor's Report.

Filed June 2, 1908.

In the Supreme Court of the District of Columbia.

Equity. No. 20802.

HORACE S. CUMMINGS ET AL.
vs.
CHARLES F. CONSAUL ET AL.

This cause is referred to me to restate certain of the accounts in accordance with the opinion and decree of the Court of Appeals. After due notice I proceeded with the reference.

In Schedule A herewith I have restated the Auditor's accounts filed May 1, 1906, taking the amount therein stated as due the complainant as of September 16, 1899 and deducting for error in a charge in the matter of the claim of R. M. Johnson administrator of Heard and on the balance computing interest from the said date September 16, 1899 to the date of the decree in this Court, being January 8, 1907. To this I add as stated in the said decree $246 being fee in the case of Joel C. Johnson administrator and computing interest thereon from July 25, 1902 to January 8, 1907.

12 I then add the sum of $614.99 as shown in Schedule A No. 2 herewith which is a restatement of the Auditor's accounts of December 21, 1906. This restatement is made in compliance with the opinion and decree of the Court of Appeals Cause No. 1778 relating to the claim of Lucy A. Caldwell. In the Auditor's report of December 21, 1906 the fee in the said claim amounting to $1050 was equally divided between the complainant and defendant. The firm of Moyers and Consaul as attorneys presented a claim in that reference for a separate allowance to them for services rendered in the prosecution of the said claim after the death of Gilbert Moyers, which demand was not allowed in the Auditor's Report. The decree of the Court of Appeals directs that a proper and reasonable allowance be made to the said firm of attorneys for their said services and upon the testimony heretofore taken and found in the record of this cause I have allowed to the said attorneys two-thirds of the entire fee being $700. This allowance leaves the sum of $350 to be divided between the complainant and defendants.

This schedule shows the amount due to the complainant as so corrected as of the date of the said decree January 8, 1907 subject to distribution shown by Schedule B. The latter schedule is a restatement of the Auditor's report on the receiver's account filed January

5, 1904 in which a correction is made of the amount of fee received in the claim of John W. Fletcher. This restatement shows the correct balance in the hands of the receivers at the date of the original report with its distribution, showing the sum of $3,648.80
13 as the share of the estate of Gilbert Moyers. This amount together with the sum of $240.05 shown by the Auditor's report of January 4, 1907 are carried to Schedule A to be paid by the receivers to the complainant and credited on the indebtedness of the defendants to the complainant, the account showing the balance due the complainant after such division and application.

JAS. G. PAYNE, *Auditor.*

SCHEDULE A.

Re-statement of the Account Filed May 1st, 1906.

Amount herein stated as due the complainant as of September 16th 1899		$8,906.68
Deduct for error in charge against defendant in report of August 20th 1902 of fee in case R. M. Johnson, Administrator of Heard, one-half of $1052.50		526.25
		$8,380.43
Interest from September 16th 1899 to January 8th 1907.		3,674.90
One-half of fee collected by Gilbert Moyers in the case of Joel C. Johnson, administrator.	$246.00	
Interest from July 25, 1902 to January 8th 1907	65.72	
		311.72
Per report of Auditor filed December 21, 1906		614.99
		$12,982.04
14		$12,982.04
To be paid by the Receivers per re-statement of Receivers' account in schedule "B" herewith	$3,648.80	
To be paid by Receivers per Auditor's report of January 4th 1907	240.05	
		3,888.85
Balance due complainant with interest from January 8, 1907		$9,093.19

JAS. G. PAYNE, *Auditor.*

SCHEDULE A, No. 2.

Re-statement of Auditor's Account of December 21st, 1906.

Fee collected in claim of Jane Edge	$607.66
Fee collected in the claim of Herbert Smith	272.33
Fee collected in claim of Lucy A. Caldwell	350.00
	$1,229.99

Share of the complainant:

One-half $614.99
Carried to schedule "A."

JAS. G. PAYNE, *Auditor.*

15 SCHEDULE B.

Re-statement of Auditor's Report on Account of Receivers Filed January 5th, 1904.

DR.

To Amount of fees collected per account of Auditor of May 20th 1903		$9,681.68
" Amount of fee received in claim of John W. Fletcher.		115.50
		$9,797.18

CR.

By Expenditures as per said account of May 20th 1903	$2,490.60	
" Commissions per said account	968.16	
" On fee in claim of John W. Fletcher	11.55	
		3,470.31
		$6,326.87
Costs of reference	$152.00	
Reserved in case of Thomas Kidd	682.00	
		834.00
		$5,492.87
To Horace S. Cummings, Administrator One half	$2,746.43	
Less expenses and payments to attorneys	902.36	
	$1,844.07	
To Estate of Gilbert Moyers, one-half	$2,746.44	
Add from above share	902.36	
	3,648.80	
		5,492.87

JAS. G. PAYNE, *Auditor.*

16 CUMMINGS
vs.
CONSAUL.

FRIDAY, *May* 1, 1908—10.30 a. m.

Hearing pursuant to notice.

Present: Mr. Tucker for the complainants and Mr. Consaul for the defendants.

Mr. CONSAUL: Representing the defendant, this present reference being for the purpose of re-stating the account in accordance with the terms of the mandate of the Court of Appeals and no further inquiry being required save as to the relative values of the services performed in the case of claim of Eaton executrix of Caldwell, the defendants now state that they desire to submit no further evidence relative to the services rendered in the Caldwell case.

Mr. TUCKER: We have no further evidence to offer on this subject.

Argument.

Adjourned.

17 *Defendant's Exceptions to Report of Auditor.*

Filed June 9, 1908.

In the Supreme Court of the District of Columbia.

Equity. No. 20802.

HORACE S. CUMMINGS, Administrator of Estate of George B. Edmonds, Dec'd, Complainant,
vs.
CHARLES F. CONSAUL and IDA M. MOYERS, Administrators of Estate of Gilbert Moyers, Dec'd, Defendants.

Come now the defendants, by their solicitors, and except to the report of the Auditor, filed herein on the second day of June, 1908, and for grounds of exceptions thereto say that the Auditor erred in the following particulars, to-wit:

I. It was error to hold that the special partnership existing between Gilbert Moyers, the intestate of the defendant, and George B. Edmonds, the intestate of the complainant, continued after the death of said Edmonds, in October, 1896.

II. In view of the death of said Edmonds, in October, 1896, prior to collection of any claims alleged to have been covered by said special partnership (save that of Susan Merrill) it was error
18 not to hold and decide that the utmost measure of recovery by the complainant against the defendant is:

(*a.*) One-half of the fee collected in the Merrill case *if* it was a partnership claim.

(*b.*) One-half the reasonable value of services rendered by the special partnership of Moyers and Edmonds, *prior* to dissolution of

said special partnership by death of Edmonds, in all other partnership claims collected by Gilbert Moyers, after deducting therefrom one-half the expenses incurred by Gilbert Moyers in the prosecution of the partnership business.

III. In view of the facts stated in the first specification, it was error to hold that after the dissolution of said special partnership by death of Edmonds, it became the duty of Gilbert Moyers to indefinitely continue the practice of law, so far as concerned the business of said special partnership, for the joint benefit of himself and the estate of the deceased special partner.

IV. It appearing from the testimony that Edmonds' contribution to the special partnership, aside from personal services, consisted of his powers of attorney from various claimants, and his fee contracts with said claimants, it was error not to hold that said powers of attorney died with the death of Edmonds, thereby removing Edmonds' contribution to said special partnership, which was dissolved by his death.

V. It was error not to hold, if the relation between Gilbert Moyers and George B. Edmonds was that of employment, that such
19 employment ceased with the death of the employer, Edmonds.

VI. It was error not to hold that Gilbert Moyers, during his lifetime, did abandon the prosecution of the Edge and Smith claims, and that such abandonment terminated his connection therewith and terminated the connection of the estate of Edmonds therewith.

VII. It was error, assuming the complainant to be entitled to take anything in this suit, to hold that the total sum paid to W. A. Montgomery for services as local counsel in the claim of the executors of Kidd, should not be deducted from the toal fee in said claim, before any division of the fee between complainant and the defendants.

VIII. It was error to hold that the fee paid to local counsel in the claim of Isaiah Beans, being twenty-five per cent. of collection, was an unreasonable fee, and error to hold that the fee so paid to local counsel in said claim in excess of one hundred dollars, should be charged wholly against the share of Moyers in said fee.

IX. It was error to hold that the claims of Ernest Neill, administrator of Joseph H. Egner; that of William Goddard, and that of Joel C. Johnson, administrator of Richard W. Johnson, or any of them, were claims within the operation of the special partnership between Moyers and Edmonds.

20 X. It was error to allow to complainant any interest on any moneys found to be due him, for any period prior to the rendering of a decree in this case which shall become final, no interest being properly allowable upon any balance found due upon a partnership accounting until the balance has been struck, and there being no balance struck in this case until the rendering of such a final decree.

XI. It was error to hold that the defendants, in their individual capacity as members of the firm of Moyers and Consaul, are accountable to the complainant for any portion of the fee received by them,

for services rendered in and about the collection of the claim of estate of Lucy A. Caldwell, under a direct employment by the claimant, after the death of Gilbert Moyers.

XII. It was error, assuming the complainant to be entitled to any share of the fee earned and collected as above set forth in said Caldwell claim, to allow to the partnership of Moyers and Edmonds one-third of the total fee received by said firm of Moyers and Consaul, the evidence showing that to the firm of Moyers and Consaul was due the credit for winning said claim, and also showing that to their associate counsel, R. W. Haynes, was due *to* credit for securing the reference of said claim to the Court of Claims, by Congress.

21 XIII. It was error, in holding complainant to be entitled to share in said *Cla*dwell fee, to discriminate between the defendants, as the firm of Moyers and Consaul, and their associate counsel, R. W. Haynes, and to hold that said firm of Moyers and Consaul should be compelled to pay to complainant a portion of the fee earned and collected by them, while holding that said Haynes, who controlled the attorneyship in said case, is entitled to retain all of the fee collected by him, the employment of said Haynes and of said firm of Moyers and Consaul being by the same instrument, executed after the death of Gilbert Moyers.

Wherefore defendants except to said report of the Auditor and pray that the same be not approved.

CHAS. F. CONSAUL,
IDA M. MOYERS,
Defendants,
By COLE AND DONALDSON,
C. F. C.,
CHAS. F. CONSAUL,
Solicitors.

Service of copy of above exceptions acknowledged this Eighth day of June, 1908.

TUCKER & KENYON,
Solicitors for Complainant.

22 *Decree.*

Filed November 16, 1908.

In the Supreme Court of the District of Columbia.

In Equity. No. 20802.

HORACE S. CUMMINGS, Administrator, Complainant,
vs.
CHARLES F. CONSAUL ET AL., Administrators, Defendants.

This cause coming on to be heard upon the report of the Auditor of the Court filed June 2, 1908, re-stating the account of the parties

to the date of the decree of this Court of January 8, 1907, as directed by the mandate of the Court of Appeals of the District of Columbia filed March 2, 1908, and upon the exceptions of the defendants to said report of the Auditor of June 2, 1908; and it appearing to the Court that said account has been re-stated in accordance with the directions of said mandate, it is by the Court, this 16th day of November, 1908, adjudged, ordered and decreed as follows, to wit:

1. That each and every of said exceptions be, and the same is hereby overruled, and said report of the Auditor filed June 2, 1908, be and the same is hereby finally ratified and confirmed.

2. That the complainant, as shown by said report of the Auditor filed June 2, 1908, is entitled to recover from the defendants,
23 as administrators of the estate of Gilbert Moyers, the sum of $12,982.04 with interest at the rate of 6% per annum from January 8, 1907, until paid, said principal sum and interest amounting as of the date hereof to $——.

3. That of the sum of $480.10 remaining of the $680 heretofore retained by the receivers herein pending the determination of the claim of George M. Barber, intervenor, as shown by the report of the Auditor filed January 4, 1907, after payment of the sum of $201.90 to the said Barber as directed by the order of this Court made December 26, 1906, the complainant is entitled to one-half, namely, $240.05, and the defendants to one-half, namely, $240.05.

4. That of the $5,492.87 in the hands of the receivers as shown by said report of the Auditor of June 2, 1908, for distribution among the parties hereto, the complainant is entitled to the sum of $1,844.07 and the defendants to the sum of $3,648.80.

5. That the receivers be, and they are hereby directed to pay forthwith to said complainant the aforesaid sums of $1,844.07 and $240.05 found to be due him as aforesaid, and also to pay to him the sums aforesaid of $3,648.80 and $240.05 found to be due the defendants as aforesaid, which said sums of $3648.80 and $240.05, when paid, shall be credited upon the sum to which the complainant is declared by the provisions of paragraph 2 hereof to be entitled to receive from the defendants; and the difference between said last mentioned sum of the amounts hereby ordered to be credited thereon, the complainant shall recover from the defendants as ad-
24 ministrators as aforesaid, together with the costs of this suit to be taxed by the clerk, and have execution therefor as at law.

6. That this cause be, and the same is hereby retained, and the right saved and reserved to the complainant to apply to this Court from time to time for an order or orders for the payment of such other and further sums of money as have or shall come into the hands of the defendants, as administrators of Gilbert Moyers, deceased, on account of the partnership heretofore adjudged to have existed between the said deceased and the said George B. Edmonds, deceased, or into the hands of the said receivers, and which may or shall be due the complainant as administrator of said George B. Edmonds, by reason of said partnership.

WRIGHT.

From the foregoing decree the defendants in open court pray an appeal to the Court of Appeals of the District of Columbia, which is hereby allowed, and the penalty of the appeal bond, if one is given to operate as a supersedeas, is hereby fixed at Fifteen thousand dollars ($15,000), and if it is to act as a bond for costs only, then in the sum of Two hundred dollars.

WRIGHT.

Memorandum.

December 9, 1908.—Appeal bond filed.

25 *Directions to Clerk for Preparation of Transcript of Record.*

Filed January 6, 1909.

In the Supreme Court of the District of Columbia.

Equity. No. 20802.

HORACE S. CUMMINGS, Adm'r of Geo. B. Edmunds, Dec'd, Complainant,

v.

CHARLES F. CONSAUL and IDA M. MOYERS, Adm'rs of Estate of Gilbert Moyers, Dec'd, Defendants.

The Clerk of Supreme Court of District of Columbia:

You are hereby requested to include in the transcript of record on appeal, the following papers, to wit:

1. Mandates of Court of Appeal-, filed March 28, 1908.
2. Order filed April 29, 1908, referring cause to Auditor for proceedings pursuant to mandate.
3. Auditor's report filed June 2, 1908.
4. Defendants' exceptions, filed June 9, 1908, to Auditor's report.
5. Final decree, filed November 16, 1908, with order allowing appeal and fixing bond.
6. Certificate of Clerk showing filing of appeal and supersedeas bond filed Dec. 9, 1908.

R. GOLDEN DONALDSON,
CHAS. F. CONSAUL,
Solicitors for Defendants.

26 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 25, both inclusive, to be a true and correct transcript of the record according to directions of counsel herein filed, copy of which is

made part of this transcript, in cause No. 20802, Equity, wherein Horace S. Cummings, Administrator of Estate of George B. Edmonds, deceased, is Complainant and Charles F. Consaul and Ida M. Moyers, Administrators of Estate of Gilbert Moyers, deceased, are Defendants, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 15th day of January, A. D. 1909.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia supreme court. No. 1980. Charles F. Consaul *et al.*, adm'rs, &c., appellants, *vs.* Horace S. Cummings, adm'r, &c. Court of Appeals, District of Columbia. Filed Jan. 18, 1909. Henry W. Hodges, clerk.

FRIDAY, *March 12th, A. D.* 1909.

No. 1980.

CHARLES F. CONSAUL and IDA M. MOYERS, Administrators of the Estate of Gilbert Moyers, Deceased, Appellants,
vs.
HORACE S. CUMMINGS, Administrator of the Estate of George B. Edmonds, Deceased.

The above entitled cause was submitted to the consideration of the Court on the printed record, and appellants brief filed herein, by Messrs. R. G. Donaldson and C. F. Consaul, attorneys for the appellants, and by Messrs. C. C. Tucker and J. M. Kenyon, attorneys for the appellee.

No. 1980.

CHARLES F. CONSAUL and IDA M. MOYERS, Administrators of the Estate of Gilbert Moyers, Deceased, Appellants,
vs.
HORACE S. CUMMINGS, Administrator of the Estate of George B. Edmonds.

Opinion.

Mr. Chief Justice SHEPARD delivered the opinion of the Court:

The final decree appealed from in this case, was entered in conformity with the mandate of this Court. The case has twice before been appealed and will be found reported in 24 App. D. C., 36, and 31 Id., 540. In the decisions therein were settled the principles governing the accounting directed to be taken between the parties.

The final decree being in accordance with those principles, is affirmed with costs.

Affirmed.

TUESDAY, *March 16th*, A. D. 1909.

No. 1980. January Term, 1909.

CHARLES F. CONSAUL and IDA M. MOYERS, Administrators of the Estate of Gilbert Moyers, Deceased, Appellants,
vs.
HORACE S. CUMMINGS, Administrator of the Estate of George B. Edmonds, Deceased.

Appeal from the Supreme Court of the District of Columbia.

This cause came on to be heard on the transcript of the record from the Supreme Court of the District of Columbia, and was argued

by counsel. On consideration whereof, it is now here ordered, adjudged and decreed by this Court that the decree of the said Supreme Court in this cause be, and the same is hereby, affirmed with costs.

Per Mr. CHIEF JUSTICE SHEPARD,
March 16, 1909.

TUESDAY, *April 6th*, A. D. 1909.

No. 1980.

CHARLES F. CONSAUL and IDA M. MOYERS, Administrators of the Estate of Gilbert Moyers, Deceased, Appellants,
vs.
HORACE S. CUMMINGS, Administrator of the Estate of George B. Edmonds, Deceased.

On motion of Mr. C. F. Consaul of counsel for the appellants in the above entitled cause, it is ordered by the Court that said appellants be allowed an appeal to the Supreme Court of the United States, and the bond to act as supersedeas is fixed at the sum of fifteen thousand dollars.

(*Bond on Appeal.*)

Know all Men by these Presents, That we, Charles F. Consaul and Ida M. Moyers, Administrators of Gilbert Moyers, as principal, and Fidelity and Deposit Company of Maryland a Corporation, as surety, are held and firmly bound unto Horace S. Cummings, Administrator of George B. Edmonds, deceased, in the full and just sum of Fifteen Thousand ($15,000) dollars, to be paid to the said George B. Edmonds' Administrator, or his certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals and dated this fifteenth day of April, in the year of our Lord one thousand nine hundred and nine.

Whereas, lately at a Court of Appeals of the District of Columbia in a suit depending in said Court, between Charles F. Consaul and Ida M. Moyers, Administrators of Gilbert Moyers and Horace S. Cummings, Administrator of George B. Edmonds a decree was rendered against the said Charles F. Consaul and Ida M. Moyers, Administrators of Gilbert Moyers and the said Charles F. Consaul and Ida M. Moyers, Administrators of Gilbert Moyers, having prayed and obtained an appeal to the Supreme Court of the United States to reverse the decree in the aforesaid suit, and a citation directed to the said Horace S. Cummings Administrator of George B. Edmonds citing and admonishing him to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date thereof;

Now, the condition of the above obligation is such, That if the said Charles F. Consaul and Ida M. Moyers Administrators of

Gilbert Moyers shall prosecute said appeal to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

IDA M. MOYERS, [SEAL.]
CHARLES F. CONSAUL, [SEAL.]
FIDELITY AND DEPOSIT COMP. OF MARYLAND, [SEAL.]
By J. SPRIGG POOLE, [SEAL.]
Attorney in Fact.

[Seal of Fidelity and Deposit Company.]

Sealed and delivered in presence of—
M. I. HUMPHREY.
JAMES A. HOGAN.

Approved by—
SETH SHEPARD,
Chief Justice Court of Appeals of the District of Columbia.

[Endorsed:] No. 1980. Charles F. Consaul et al, &c., Appellants, vs. Horace S. Cummings. Supersedeas Bond on Appeal to Supreme Court U. S. Court of Appeals, District of Columbia. Filed Apr. 17, 1909. Henry W. Hodges, Clerk.

UNITED STATES OF AMERICA, *ss:*

To Horace S. Cummings, Administrator of the Estate of George B. Edmonds, deceased, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to an order allowing an appeal, filed in the Clerk's Office of the Court of Appeals of the District of Columbia, wherein Charles F. Consaul and Ida M. Moyers, Administrators of the Estate of Gilbert Moyers, deceased, are appellants and you are appellee, to show cause, if any there be, why the decree rendered against the appellants, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Seth Shepard, Chief Justice of the Court of Appeals of the District of Columbia, this 17th day of April, in the year of our Lord one thousand nine hundred and nine.

SETH SHEPARD,
Chief Justice of the Court of Appeals of the District of Columbia.

Service accepted April 17, 1909.
CHAS. COWLES TUCKER,
Counsel for Appellee.

[Endorsed:] Court of Appeals, District of Columbia. Filed Apr. 17, 1909. Henry W. Hodges, Clerk.

In the Court of Appeals of the District of Columbia.

No. 1980.

CHARLES F. CONSAUL and IDA M. MOYERS, Administrators of Estate of Gilbert Moyers, Deceased, Appellants,
vs.
HORACE S. CUMMINGS, Administrator of Estate of George B. Edmonds, Deceased.

Appellants' Designation of Transcript on Appeal.

The Clerk of the Court of Appeals of the District of Columbia will please include the following papers in the transcript on appeal to the Supreme Court of the United States, to wit:

Papers from Case No. 1361.

Record.
Argument.
Opinion.
Decree.
Appellants' motion to modify and enlarge decree, filed June 3, 1904, and the submission of said motion on June 7, 1904.
Appellee's motion for reargument, or modification of decree, filed June 7, 1904, and the submission of said motion on said date.
Opinion of Court on appellants' motion to modify and enlarge decree filed June 8, 1904.
Order of Court denying appellee's motion for reargument or modification of decree, filed June 8, 1904.

Papers from Case No. 1778.

Record.
Petition for certiorari & submission & granting of same.
Return to writ of certiorari.
Argument.
Opinion.
Decree.

Papers from Case No. 1980.

Record.
Argument.
Opinion.
Decree.
Order allowing appeal to Supreme Court U. S. and fixing bond.
Bond.
Citation.
And this designation.

CHAS. F. CONSAUL,
Counsel for Appellants.

(Endorsed:) In the Court of Appeals of the District of Columbia. No. 1980. Charles F. Consaul et al., Adm'rs of Gilbert Moyers, Dec'd, Appellants, v. Horace S. Cummings, Adm'r of George B. Edmonds, Dec'd, Appellee. Appellants' Designation of Transcript on Appeal to the Supreme Court of the United States. Court of Appeals, District of Columbia. Filed Apr. 20, 1909. Henry W. Hodges, Clerk.

Court of Appeals of the District of Columbia.

I, Henry W. Hodges, Clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing printed and typewritten pages numbered from 1 to 752 inclusive, contain a true copy of the transcript of the record and proceedings of said Court of Appeals in the case of Charles F. Consaul and Ida M. Moyers, Administrators of the Estate of Gilbert Moyers, deceased, Appellants, vs. Horace S. Cummings, Administrator of the Estate of George B. Edmonds, deceased, No. 1980, April Term, 1909, as the same remain upon the files and records of said Court of Appeals.

In testimony whereof I hereunto subscribe my name and affix the seal of said Court of Appeals, at the City of Washington, this 21st day of April, A. D. 1909.

[Seal Court of Appeals, District of Columbia.]

HENRY W. HODGES,
Clerk of the Court of Appeals of the District of Columbia.

Endorsed on cover: File No. 21630. District of Columbia Court of Appeals.Term No. 206. Charles F. Consaul and Ida M. Moyers, administrators of the estate of Gilbert Moyers, deceased, appellants, vs. Horace S. Cummings, administrator of the estate of George B. Edmonds, deceased. Filed April 24th, 1909. File No. 21630.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

No. 38.

CHARLES F. CONSAUL AND IDA M. MOYERS, ADMINISTRATORS OF THE ESTATE OF GILBERT MOYERS, DECEASED, APPELLANTS,

vs.

HORACE S. CUMMINGS, ADMINISTRATOR OF THE ESTATE OF GEORGE B. EDMONDS, DECEASED, APPELLEE.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

MOTIONS TO DISMISS OR AFFIRM.

Comes here now the appellee, by his counsel, and moves the court as follows:

1. To dismiss this appeal, for want of an assignment of errors; or

2. To affirm the decree, for the reasons set down in the annexed memorandum.

CHARLES COWLES TUCKER,
J. MILLER KENYON,
Solicitors for Appellee.

Memorandum.

I.

Motion to dismiss: There is a total lack of an assignment of errors; the appeal was prayed and allowed *ex parte* (Record, 727), without any such assignment; the case was before the court below four times (17 App. D. C., 269; 24 App. D. C., 36; 31 App. D. C., 540, and 33 App. D. C., 132); it has been pending over eleven years; it is an ordinary suit for a partnership accounting between lawyers handling Government claims; the printed record contains 730 pages, much being in the form of questions and answers; the appellee can only indulge in conjecture as to what questions he is to prepare to meet in this court; it is impossible for this court to inform itself what questions of law or fact are raised or intended to be raised for its consideration; the appeal has been pending two and one-half years, and will be reached on regular call about the latter part of October, 1911, or the early part of November next; no brief has been filed by the appellants, and relative to the questions of law or fact intended to be raised, the appellee is not sufficiently informed to enable him to begin the preparation of his brief on the merits.

The character of the case is peculiarly such as sharply to call for dismissal for failure to file the required assignment of errors, for nothing is involved but pure questions of fact which have uniformly been decided against the appellants by the Court of Appeals, the trial court, and Auditor Payne, more than once by each, while the questions of law are only of the ordinary kind which commonly occur in any usual case such as this.

We do not think that this appeal presents any of the features which prevented dismissal for failure to file an assignment of errors in the case of *Columbia Heights Realty Co. vs. Rudolph*, 217 U. S., 547, 551-552 (in error), or

Briscoe vs. Rudolph, 221 U. S., — (appeal decided May 29, 1911), for both of those cases involved the validity and enforcement of assessment laws and presented questions of far-reaching importance to both the public and the owners of real estate assessed for benefits. In neither case did counsel for the appellees raise any objection whatever to the want of an assignment of errors, and in the *Briscoe* case the court says in terms that the reason it avails itself of Rule 21 is in order "that questions of such gravity may not be passed without notice," and then proceeds to determine the "objection to the constitutionality of the act" of Congress involved.

It is true that in the *Briscoe* case the court also speaks of the fact that the appeal was taken prior to the warning contained in the *Columbia Heights Realty Company* case; but we take it that the real and exclusive reason for not dismissing both cases for failure to file the assignment of errors was the gravity of the questions presented, and this appears, we believe, by the following extracts from those opinions:

In *Columbia Heights Realty Co. vs. Rudolph*, 217 U. S., 547, the court says (550-552):

> "* * * A writ of error was taken by the plaintiffs in error to the Court of Appeals for the District of Columbia, where the judgment of the Supreme Court was affirmed. Thereupon this writ of error was sued out.
>
> "This protracted litigation is now before us, unaccompanied by an assignment of errors.
>
> "The act of February 9, 1893, ch. 74, § 8, 27 Stat. at Large, 436, concerning writs of error and appeals from the Court of Appeals of the District of Columbia, provides that they shall be allowed in the 'same manner and under the same regulations as heretofore provided for in cases of writs of error on judgments or appeals from decrees rendered in the Supreme Court of the District of Columbia.' The procedure referred to is that found in § 705, Rev. Stat., which provides that such writs or appeals shall be allowed in the 'same manner and under the same regulations as are provided in cases of writs of error on judgments or appeals from decrees rendered in a circuit court.'

"Sections 997 and 1012, Rev. Stat., require the transcript from the circuit court to be filed with an assignment of errors, and the thirty-fifth rule of this court prescribes the character of such assignments, and 'that no writ of error or appeal shall be allowed until such assignment of errors shall have been filed, * * *' and that 'errors not assigned according to this rule will be disregarded, but the court at its option, may notice a plain error not assigned.' This rule refers in terms only to writs of error and appeals under § 5 of the act of March 3, 1891, but it is, in effect, extended to every writ of error or appeal to or from any court by rule 21, which requires that the brief shall set out 'a specification of the errors involved.' This 'specification of error' must conform to rule 35 in particularity. Thus the fourth paragraph of rule 21 provides: 'When there is no assignment of errors, as required by § 997 of the Revised Statutes, counsel will not be heard, except at the request of the court, and errors not specified according to this rule will be disregarded; but the court, at its option, may notice a plain error not assigned or specified.'

"The court has, however, not regarded itself as under any absolute obligation to dismiss a writ of error or appeal because of the non-assignment of errors as required by §§ 997 and 1012, Rev. Stat., having, by its rules, reserved the option to notice a plain error whether assigned or not. *Ackley School District vs. Hall*, 106 U. S., 428; *Farrar vs. Churchill*, 135 U. S., 609, 614; *United States vs. Pena*, 175 U. S., 500, 502.

"In the present case the brief of counsel for the plaintiffs in error specifies ten alleged errors. The defendants in error have made no objection for failure to assign error under §§ 997 and 1012, Rev. Stat., but have submitted the case upon the specifications of error in the brief of the plaintiffs in error. For these reasons we shall exercise the option reserved under both rules 21 and 35 of examining the transcript that we may be advised as to whether there has occurred any 'plain error' which obviously demands correction."

In *Briscoe vs. Rudolph*, 221 U. S., —, Adv. Sh. L. C. P. Co., October Term, 1910, page 679 (decided May 29, 1911), the court says (680):

> "There is no assignment of errors, as required by §§ 997 and 1012, Rev. Stat. (U. S. Comp. Stat., 1901, pp. 712, 716), and by the 35th rule of this court. These statutes and the rule apply to appeals from the courts of the District of Columbia, as we pointed out in the case of *Columbia Heights Realty Co. vs. Rudolph*, 217 U. S., 547, 54 L. ed., 877, 30 Sup. Ct. Rep., 581. An assignment in the brief of appellant seems to have been regarded by many members of the District bar as sufficient. That erroneous practice has been followed here, and three errors have been assigned, though in substance there are but two. One is that the act of February 10, 1899, for the extension of Rhode Island avenue, is unconstitutional. The other is, that the judgment confirming the assessment made by a jury of seven over the objection of the appellant is void, and conferred no authority to enforce by sale the assessment so made.
>
> "This appeal was taken prior to the warning contained in the *Columbia Heights Realty Company case*. For this reason, we shall avail ourselves of the provision in the 21st rule of this court, by which we reserve the right to 'notice a plain error,' not because we assume the errors assigned in the brief to be 'plain,' but that *questions of such gravity* may not be passed without notice, in view of the practice heretofore prevailing in the courts of the District of Columbia."

It has been directly ruled that a failure to file an assignment of errors, as required by section 997 and the rules, is a default under paragraph 5 of rule 21, as the cited cases, *supra* and *infra*, show.

In *Farrar vs. Churchill*, 135 U. S., 609, the court says (612-613, 613-614):

> "By section 997 of the Revised Statutes, an assignment of errors is required to be annexed to and returned with a writ of error, and the rules, regulations

and restrictions are, as remarked before, the same as to appeals as in cases of writs of error. By the twenty-first rule of this court, it is, among other things, provided that the brief of counsel for plaintiff in error or appellant shall contain 'a specification of the errors relied upon, which, in cases brought up by writ of error, shall set out separately and particularly each error asserted and intended to be urged; and in cases brought up by appeal the specification shall state, as particularly as may be, in what the decree is alleged to be erroneous. * * * When the error alleged is to a ruling upon the report of a master, the specification shall state the exception to the report and the action of the court upon it. * * * When there is no assignment of errors, as required by section 997 of the Revised Statutes, counsel will not be heard, except at the request of the court; and errors not specified according to this rule will be disregarded; but the court, at its option, may notice a plain error not assigned or specified. When, according to this rule, a plaintiff in error or an appellant is in default, the case may be dismissed on motion.'

"There is no assignment of errors annexed to the transcript of the record in this case, nor does the brief of counsel contain any specification of errors, such as is required by our rule. We shall not in this instance decline to consider what we suppose to be the errors relied on, but we call attention to this disregard of the statute and the rule, in the hope that nothing more is needed to prevent its recurrence hereafter."

Farrar vs. Churchill, supra, was decided May 19, 1890—more than twenty years ago—and it gives the same warning that was repeated May 16, 1910, in the *Columbia Heights Realty Company* case, *supra.*

The instant case presents no plain errors; indeed, no errors of any kind; the appellants are in default under rules 21 and 35, and the appeal should be dismissed on this motion.

In this connection let us here note that in the recommendations by the justices of the Supreme Court of the United States for rules to be adopted by the circuit courts of appeals

established by the act of March 3, 1891, which recommendations are printed in 210 U. S., 586-602, the following provisions, which have been adopted in all the circuits, were presented:

Rule 11, as to assignment of errors, reading as follows:

> "The plaintiff in error or appellant shall file with the clerk of the court below, with his petition for the writ of error or appeal, an assignment of errors, which shall set out separately and particularly each error asserted and intended to be urged. No writ of error or appeal shall be allowed until such assignment of errors shall have been filed. When the error alleged is to the admission or to the rejection of evidence, the assignment of errors shall quote the full substance of the evidence admitted or rejected. When the error alleged is to the charge of the court, the assignment of errors shall set out the part referred to *totidem verbis*, whether it be in instructions given or in instructions refused. Such assignment of errors shall form part of the transcript of the record and be printed with it. When this is not done, counsel will not be heard, except at the request of the court; and errors not assigned according to this rule will be disregarded, but the court, at its option, may notice a plain error not assigned."

Rule 14, relative to writs of error, appeals, return, and record, section 1 thereof being to this effect:

> "1. The clerk of the court to which any writ of error may be directed shall make a return of the same by transmitting a true copy of the record, bill of exceptions, assignment of errors, and all proceedings in the case, under his hand and the seal of the court."

Rule 24, concerning briefs, in paragraph 2 of section 2, and sections 4 and 5, declaring:

> "(2) A specification of the errors relied upon, which, in cases brought up by writ of error, shall set out separately and particularly each error asserted and intended to be urged; and in cases brought up by

appeal the specification shall state, as particularly as may be, in what the decree is alleged to be erroneous. When the error alleged is to the admission or to the rejection of evidence, the specification shall quote the full substance of the evidence admitted or rejected. When the error alleged is to the charge of the court, the specification shall set out the part referred to *totidem verbis,* whether it be in instructions given or in instructions refused. When the error alleged is to a ruling upon the report of a master, the specification shall state the exception to the report and the action of the court upon it.

"4. When there is no assignment of errors, as required by § 997 of the Revised Statutes, counsel will not be heard, except at the request of the court; and errors not specified according to this rule will be disregarded; but the court, at its option, may notice a plain error not assigned or specified.

"5. When, according to this rule, a plaintiff in error or an appellant is in default, the case may be dismissed on motion; and when a defendant in error or an appellee is in default he will not be heard, except on consent of his adversary, and by request of the court."

The identity of the wording of these rules with that of the rules of this court will be observed.

If this case were in a circuit court of appeals, at this date, it would be promptly dismissed for failure to comply with the statute and rule requiring an assignment of errors, while about twenty years ago the court would have first examined the record and then dismissed or affirmed, as the following cases show:

In *Lockman vs. Lang,* 128 Fed. (C. C. A.), 279, the court says (280-281):

"This is an appeal from an adjudication in bankruptcy rendered on March 24, 1903. On the same day the bankrupt prayed an appeal and it was allowed, but he filed no assignment of errors until March 31, 1903. A motion is made to dismiss the appeal because the assignment of errors was not filed

when the appeal was allowed. Section 997 of the Revised Statutes [U. S. Comp. St., 1901, p. 712] makes an assignment of errors, a prayer for reversal, and a citation to the adverse party essential parts of the record upon which a review of the rulings of a trial court may be invoked in the appellate courts of the United States. When an appeal is prayed and allowed in open court, the prayer for reversal and the citation may be waived, but the assignment of errors is indispensable to the perfection of the appeal. Rule 11 (91 Fed., vi, 32 C. C. A., lxxxviii) of this court provides that 'the plaintiff in error or appellant shall file with the clerk of the court below, with his petition for the writ of error or appeal, an assignment of errors which shall set out separately and particularly each error asserted and intended to be urged. No writ of error or appeal shall be allowed until such assignment of errors shall have been filed.' The reasons for this rule and the importance of a compliance with it have been stated in numerous opinions of this court. *City of Lincoln vs. Sun Vapor Street Light Co.,* 8 C. C. A., 253, 256; 59 Fed., 756, 759; *Union Pac. R. Co. vs. Colorado Eastern R. Co.,* 4 C. C. A., 160, 54 Fed., 22; *U. S. vs. Goodrich,* 4 C. C. A., 160, 161; 54 Fed., 21, 22. In *Frame vs. Portland Gold Min. Co.,* 47 C. C. A., 664, 665; 108 Fed., 750, 751; this court dismissed a writ of error because the assignment of errors was not filed until two days after the issue of the writ. In *Webber vs. Mihills* (C. C. A.), 124 Fed., 64, we dismissed an appeal because the assignment of errors was not filed until seven days after the appeal was allowed. There are other authorities which illustrate the application of this rule: *Flahrity vs. Railroad Co.,* 6 C. C. A., 167; 56 Fed., 908; *Crabtree vs. McCurtain,* 10 C. C. A., 86; 61 Fed., 808; *Lloyd vs. Chapman,* 35 C. C. A., 474; 93 Fed., 599; *Insurance Co. vs. Conoley,* 11 C. C. A., 116; 63 Fed., 180; *Grape Creek Coal Co. vs. Farmers' Loan & Trust Co.,* 12 C. C. A., 350; 63 Fed., 891; *Van Gunden vs. Iron Co.,* 3 C. C. A., 294; 52 Fed., 838; *Railway Co. vs. Reeder,* 22 C. C. A., 314; 76 Fed., 550. The assignment of errors in this case was not filed until the seventh day after the appeal was allowed, and under

rule 11 and the uniform decisions of this court the appeal must be dismissed."

In *Webber vs. Mihills,* 124 Fed., 64, the court says (65-66):

"But the fact is that the merits of this case are not within our reach, because no assignment of errors was filed in the court below until more than six days after the appeal was allowed. Section 997 of the Revised Statutes [U. S. Comp. St., 1901, p. 712] makes an assignment of errors, a prayer for reversal, and a citation to the adverse party essential parts of the record upon which a review of the rulings of a trial court may be invoked in the appellate courts of the United States. When an appeal is prayed and allowed in open court the prayer for reversal and the citation may be waived. But the assignment of errors is indispensable to the perfection of the appeal. Rule 11 of this court provides that 'the plaintiff in error or appellant shall file with the clerk of the court below, with his petition for the writ of error or appeal, an assignment of errors which shall set out separately and particularly each error asserted and intended to be urged. No writ of error or appeal shall be allowed until such assignment of errors shall have been filed.' 91 Fed., vi, 32 C. C. A., lxxxviii. Attention has been sharply called to this rule, and the announcement has been plainly made that it would be enforced, although in the earlier cases the errors assigned were carefully examined, that no injustice might result from an unexpected application of the rule. *U. S. vs. Goodrich,* 4 C. C. A., 160, 161; 54 Fed., 21, 22; *Union Pac. R. Co. vs. Colorado Eastern R. Co.,* 4 C. C. A. 161; 54 Fed., 22; *City of Lincoln vs. Sun-Vapor Street Light Co. of Canton,* 8 C. C. A., 253; 59 Fed., 756, 759. But in the later cases the rule has been steadily and uniformly enforced. Thus, in *Frame vs. Portland Gold Min. Co.,* 47 C. C. A., 664, 665; 108 Fed., 750, 751, a writ of error was dismissed because the assignment of errors was not filed until two days after the issue of the writ. To the same effect are *Flahrity vs. Railroad Co.,* 6 C. C. A., 167; 56 Fed., 908; *Crabtree vs. McCurtain,* 10 C. C. A., 86; 61 Fed.,

808; *Lloyd vs. Chapman*, 35 C. C. A., 474; 93 Fed., 599, 601; *Insurance Co. vs. Conoley*, 11 C. C. A., 116; 63 Fed., 180; *Grape Creek Coal Co. vs. Farmers' Loan & Trust Co.*, 12 C. C. A., 350; 63 Fed., 891; *Van Gunden vs. Iron Co.*, 3 C. C. A., 294; 52 Fed., 838; *Railway Co. vs. Reeder*, 22 C. C. A., 314; 76 Fed., 550. The assignment of errors in this case was not filed until seven days after the allowance of the appeal, and the appeal must be dismissed under rule 11. It is so ordered."

In *Frame vs. Portland Gold Mining Co.*, 108 Fed. (C. C. A.), 750, the court says (750-751):

"A motion has been made to dismiss the writ of error in this case because the assignment of errors was not filed until after the writ was issued. Section 997 of the Revised Statutes makes an assignment of errors, a prayer for reversal, and a citation to the adverse party essential parts of the record upon which a review of the rulings of a trial court may be invoked in the appellate courts of the United States. Rule 11 of this court (32 C. C. A., cxlvi) provides that 'the plaintiff in error or appellant shall file with the clerk of the court below, with his petition for the writ of error or appeal, an assignment of errors which shall set out separately and particularly each error asserted and intended to be urged. No writ of error or appeal shall be allowed until such assignment of errors shall have been filed.' This is a just and reasonable rule. It makes the filing of the assignment of errors before the writ is allowed indispensable to its issue, to the end that the judge to whom application is made for its allowance may be informed what the alleged errors are upon which the petitioner relies, and may thus intelligently decide whether or not the prayer of his petition should be granted, and also to the end that the opposing counsel and the appellate court may be informed what questions of law are raised for consideration. In the early history of this court attention was sharply called to this rule, and the announcement was clearly made that it would be enforced, although in the early cases in which its enforcement was invoked we carefully examined the errors assigned in

order that no injustice might result from the application of the rule. *U. S. vs. Goodrich*, 4 C. C. A., 160; 54 Fed., 21, 22; *Union Pac. R. Co. vs. Colorado Eastern R. Co.*, 4 C. C. A., 161; 54 Fed., 22; *City of Lincoln vs. Sun Vapor Street-Light Co. of Canton*, 8 C. C. A., 253; 59 Fed., 756, 759.

"The writ of error in this case was filed on August 18, 1900, and no assignment of error in this case was presented with the petition, and none was filed until August 20, 1900, two days after the issue of the writ. An affidavit has been presented in explanation of the failure to present the assignment of errors before the writ was issued, but it presents no sufficient excuse for a failure to comply with the rule. The motion to dismiss the writ is granted. *Flahrity vs. Railroad Co.*, 6 C. C. A., 167; 56 Fed., 908; *Crabtree vs. McCurtain*, 10 C. C. A., 86; 61 Fed., 808; *Lloyd vs. Chapman*, 35 C. C. A., 474; 93 Fed., 599, 601; *Insurance Co. vs. Conoley*, 11 C. C. A., 116; 63 Fed., 180; *Grape Creek Coal Co. vs. Farmers' Loan & Trust Co.*, 63 Fed., 891; *Van Gunden vs. Iron Co.*, 3 C. C. A., 294; 52 Fed., 838; *Railway Co. vs. Reeder*, 22 C. C. A., 314; 76 Fed., 550."

In *Dufour vs. Lang*, 54 Fed. (C. C. A.), 913, the court says (917):

"We are of the opinion that the second ground on which the dismissal of this appeal is moved is also well taken. Appeals from the circuit courts shall be subject to the same rules, regulations, and restrictions as are or may be prescribed in law in cases of writs of error. Rev. St., sec. 1012. There shall be annexed to and returned with any writ of error for the removal of a cause, at the day and place therein mentioned, an authenticated transcript of the record, an assignment of errors, and a prayer for reversal, with a citation to the adverse party. Rev. St., sec. 997. Our rule 11 (47 Fed. Rep., vi.), based on these provisions of the statute, requires the plaintiff in error or appellant to file with the clerk below, with his petition for writ of error or appeal, an assignment of errors, which shall set out separately and particu-

larly each error asserted and intended to be urged. The first clause of subdivision 5 of rule 24 (*Id.*, xi), provides that when, according to this rule, a plaintiff in error or an appellant is in default, the case may be dismissed on motion. The counsel for the appellants insists that this rule can never have been intended to relate to any appeals except appeals from admiralty causes. There is, however, nothing in the language of the statutes or of our rules, or in the nature of the case, restricting the application of the rule to appeals in admiralty. The purpose of the rule is twofold: to advise the adversary as to what he is to defend, and to aid the appellate court in reviewing the case. It is so far not jurisdictional that the court may, in a proper case, entertain the appeal, and notice a plain error not assigned or specified; but we consider the better practice is to require a compliance with the rule in all cases of appeals in equity, as well as of writs of error in cases at law. We conclude, therefore, that the motion to dismiss this appeal is well taken, and should be granted, and it is so ordered."

II.

Motion to affirm: As hereinbefore shown, this is an ordinary suit for partnership accounting; we have already stated that it was four times before the court below; the record contains 730 printed pages, much being matter not digested and much being in the form of questions and answers; the principal questions involved are purely of fact; they have been uniformly found against the appellants by the Court of Appeals, the trial court, and Auditor Payne, more than once by each, and are of minor importance; no constitutional or other grave questions of law are presented, but such as are involved are unimportant, and only of the ordinary kind which frequently occur in any case of this common character; none of the issues of law or fact is of any consequence whatever as affecting or controlling any other cases, either here or elsewhere, and the

entire amount in dispute is only about $16,000. These matters appear very clearly by reference to the opinions of the court below, which appear on pages 388-397 and 703-710 of this record. There is nothing in the case which calls on this court to exercise any of its discretion or reserved rights in favor of the appellants—quite the contrary.

Allowing fully for the fact that this appeal was taken before the warning above mentioned, the cases cited show that at the utmost the court will merely look into the record on this motion to dismiss, and either grant it or affirm the decree. The bill (Record, 1) was filed September 16, 1899, and the case is one which now calls for an end of litigation as speedily and summarily as possible.

In *Mast Co. vs. Superior Drill Co.*, 154 Fed. (C. C. A.), 45, the court says (49, 51):

> "Rule 11, above referred to, declares that 'errors not assigned according to this rule will be disregarded'; but it is added that 'the court at its option may notice a plain error not assigned.' And counsel for the appellant (defendant below) asks us to exercise this option in its favor and take cognizance of some matters which he thinks are plain errors in the record before us, referring to several cases where we have exercised this privilege. In the circumstances, although we are loath, at this late day, to longer indulge the disregard of a wholesome rule, the court is inclined to inquire whether there is in the record any error so plain that the court ought to take notice of it. It is manifest, however, that the rule does not intend that we are to sift the record and deal with questions which are of small importance, but only to notice errors which are obvious upon inspection and of a controlling character. The underlying purpose of this reservation in the rule is to prevent the miscarriage of justice from oversight."

In *Mutual Life Ins. Co. vs. Conoley*, 63 Fed. (C. C. A.), 180, the court says (181-182):

> "In the absence of a bill of exceptions certifying the evidence applicable to the same, it is impossible for this court to pass on the questions presented by several of the assignments of error, even if the latter could be considered. We feel compelled to enforce the provisions of the rules and the requirements of the practice alluded to, and to again announce that this court, in order to secure uniformity in the proceedings of the circuit and district courts, as well as in its own, will hereafter insist upon a strict compliance with the same; and we do this in the present case the more readily for the reason that its record shows that no substantial error was committed by the court below, and that, consequently, no injustice will in fact be done to the parties thereby, while much good may result therefrom, we hope. *The judgment below is affirmed.*"

It will be noted that in the circuit courts of appeals cases cited herein assignments of errors were in fact filed, but after the appeals had been taken or the writs of error brought, this after-filing, in one instance at least, being under express authority of an order of court passed when the appeal was allowed; yet such assignments were held too late to be regarded, and dismissals followed for the defaults in this respect.

In the present case no assignment of errors has ever been filed on this appeal.

In *U. S. vs. Goodrich*, 54 Fed. (C. C. A.), 21, the court says (21-22):

> "As the appellant did not file any assignment of errors when it prayed for its appeal, nor until after the six months allowed for perfecting the appeal had expired, the errors assigned in this case must be disregarded under the rule. In view of the fact that this is the first case in which we have had occasion to enforce this rule, we have carefully examined this record, and are satisfied that no substantial error was committed by the court below, and that no injustice will be done by the application of the rule to this

case, while the announcement that it will be enforced may promote its observance, and thus prevent injustice from its enforcement in future. The result is that this court will not consider errors the assignment of which is not made and filed in the court below when the appeal or writ of error is allowed. *The judgment below is affirmed.*"

The application of the foregoing cases to this record is manifest. Not only has no assignment of errors been filed, but none can be filed which the court can consider. There is no plain error not assigned; it is unreasonable to ask this court "to sift the record, and deal with questions of small importance."

If the court will examine this record, as was done by the circuit courts of appeals in *U. S. vs. Goodrich* and *Mutual Life Ins. Co. vs. Conoley*, *supra*, the court will be satisfied, as were those courts under exactly similar circumstances, that no substantial error was committed by the court below and no injustice will be done by the affirmance of the decree in this case.

We respectfully submit that this appeal shall be dismissed or the decree affirmed.

CHARLES COWLES TUCKER,
J. MILLER KENYON,
Solicitors for Appellee.

WASHINGTON, D. C., *October* 9, 1911.

Notice.

Counsel for the appellants will please take notice that the foregoing motions and annexed memorandum will be presented to the court on Monday, November 6, 1911, at 12 o'clock meridian, or as soon thereafter as counsel can be heard.

CHARLES COWLES TUCKER,
J. MILLER KENYON,
Solicitors for Appellee.

To Messrs. R. GOLDEN DONALDSON and
CHARLES F. CONSAUL,
Solicitors for Appellants.

Service of copies of the foregoing motions and memorandum acknowledged this — day of October, 1911.

.....

.....
Solicitors of Appellants.

[13602]

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Office Supreme Court U. S.
FILED
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JAMES H. McKENNEY,
Clerk.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1911.

No. 38.

CHARLES F. CONSAUL AND IDA M. MOYERS, Administrators of Gilbert Moyers, Deceased, *Appellants,*

vs.

HORACE S. CUMMINGS, Administrator of George B. Edmonds, Deceased, *Appellee.*

APPELLANTS' BRIEF IN OPPOSITION TO APPELLEE'S MOTION TO DISMISS APPEAL.

A. S. WORTHINGTON,
CHAS. F. CONSAUL,
Solicitors for Appellants.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1911.

No. 38.

CHARLES F. CONSAUL AND IDA M. MOYERS, Administrators of Gilbert Moyers, Deceased, *Appellants*,

vs.

HORACE S. CUMMINGS, Administrator of George B. Edmonds, Deceased, *Appellee*.

APPELLANTS' BRIEF IN OPPOSITION TO APPELLEE'S MOTION TO DISMISS APPEAL.

The motion to dismiss the appeal which has been taken in this case from the decree of the Court of Appeals of the District of Columbia is based upon the fact that the assignments of error were not made a part of the Transcript of Record coming from the Court below, they being set forth in appellants' brief now on file.

In this case the Transcript of the Record on appeal was filed in this Court on *April 24, 1909*, appellants having given a supersedeas bond in the sum of $15,000.00 as a condition to having the appeal act as a supersedeas.

When this appeal was docketed in this Court, and for many years prior thereto, the general, if not absolutely, uniform practice in cases coming to this Court from the Court of Appeals of the District of Columbia had been to set forth the assignment of errors in appealed cases in the ***brief***, and ***only*** in the brief.

That practice which obtained ever since the Court of Appeals of the District of Columbia was established, apparently had never been questioned or made the subject of any adverse comment or criticism by this Honorable Court in any reported decision, until the case of Columbia Heights Realty Co. vs. Rudolph, 217 U. S., 547, decided May 16, *1910*, over a year after the docketing of the present case in this Court.

In that case reference was made by the Court to its Rule 35, and it was stated by the Court that said rule in terms refers only to writs of error and appeals under Sec. 5 of the Act of March 3, 1891 (26 Stat., 827), and it was said, in effect by the Court, that in order to render Rule 35 applicable to cases coming from the Court of Appeals of the District of Columbia, it was necessary to refer from said Rule 35, to Rule 21.

We ask attention to these features of the case of Realty Co. vs. Rudolph merely to show to this Court that the matter now in question was not one which could be said to be free from doubt, in any event, and in that connection we also ask attention to the fact that the writ of error in that case was *not* dismissed for want of compliance with the rule so then construed by the Court.

In the case of Briscoe vs. Rudolph (221 U. S., —), de-

cided May 29, 1911 (Advance Ops., p. 679-680), this same point was mentioned by the Court, and it was stated by the Court that the appeal in question was taken *"prior to the warning contained in the Columbia Heights Realty Company Case."*

And then the Court said (the emphasis being ours):

> *"For this reason*, we shall avail ourselves of the provision in the 21st rule of this Court, by which we reverse the right to 'notice a plain error,' not because we assume the errors assigned in the brief to be 'plain,' but that questions of such gravity may not be passed without notice, *in view of the practice heretofore prevailing in the courts of the District of Columbia."*

Attention is asked to the fact that the case at bar was docketed over a *year before* the *"warning"* given in the Columbia Heights Realty Company case, and that the reservation of the assignments of error to the brief of appellants was merely in accord with *"the practice heretofore prevailing in the courts of the District of Columbia."*

In the recent case of Merillat *et al.* vs. Hensey, decided May 15, 1911 (221 U. S., —; Advance Sheets, p. 576), a motion to dismiss the appeal on the same ground was filed, the case being one appealed from the Court of Appeals of the District of Columbia, but the motion was *not* allowed, and the case was considered on the Record. Not only was the appeal not dismissed, but in the statement of the case by Mr. Justice Lurton, it was expressly said, after referring to the decree of the Court of Appeals, that (emphasis being ours):

> "From that decree an appeal has been *perfected* to this Court."

Yet in that case the errors were assigned *only* in the appellants' brief, and a motion to dismiss was interposed on *that* ground.

If an appeal in the Merillat-Hensey case could be *"perfected"* by inserting the assignments of error only in the brief, there would seem to be no good reason why the case at bar may not be considered on the merits, as were the other District of Columbia cases.

It is a rather significant fact that counsel for appellee have been unable to cite a single case in *this* Court, where the appeal has been dismissed on the ground relied upon here.

As to what is quoted from the decision in case of Farrar vs. Churchill, 135 U. S., 609, the first part of the quotation would appear at first glance to lend support to the motion here filed, but it will be noted that in the Farrar-Churchill case there was *no assignment of errors anywhere,* this Court stating (emphasis being ours):

> "There is no assignment of errors annexed to the Transcript of the Record in this case, *nor does the brief of counsel contain any specification of errors such as is required by our rule.*"

The cases whereon appellee seems to rely as supporting his motion to dismiss this appeal are all *lower court* cases, which obviously cannot control the action of *this* Court in any matter, to say nothing of a matter which depends wholly on a *rule* of *this* Court.

So far as counsel for appellants can discern, the gist of the argument of appellee in behalf of his motion to dismiss is contained in the following language, quoted from page 8 of his brief on the motion:

> "If this case were in a Circuit Court of Appeals, at this date, it would be promptly dismissed for failure to comply with the statute and rule requiring assignment of errors. * * *"

As above suggested, however, decisions of circuit courts or courts of appeal cannot be in any way determinative of the action of *this* Court in the application or construction of *this* Court's own rules.

Of course, this Court must be the judge of the effect and application of its own rules as well as of statutory provisions, and as the point here involved is not a novel one, we refer to the earlier cases before this Court, where this point has been considered.

In case of Independent School District of Ackley, Hardin County, Iowa, vs. Hall, 106 U. S., 428-429, this Court said, in passing on motions to dismiss appeals and to affirm:

> "*These motions are denied.* A failure to annex to or return with a writ of error an assignment of errors, as required by Section 997 of the Revised Statutes, is no ground for dismissal for want of jurisdiction. If an assignment is filed in accordance with the requirements of Paragraph 4, Rule 21, it will ordinarily be enough."

A similar motion was made in case of U. S. vs. Pena, 175 U. S., 500-502, and the Court there said, in speaking of the motion to dismiss appeal:

> "A third proposition is that no assignment of errors is annexed to the transcript, as required by Secs. 997 and 1012 of the Revised Statutes. But this is not sufficient to compel a dismissal of the appeal. Paragraph 4 of Rule 21 of this Court provides that the Court may at its option notice a plain error not assigned."

Referring to the above quotation from case of Ackley School District vs. Hall (106 U. S., 428), and to the present rule of this Court, it would seem that there has been a change in the paragraphing of Rule 21, and that the provision of Rule 21, referred to in the quoted statement, is now that included in Paragraph 2 of Rule 21, which provides that the *brief* shall contain the specification of errors, and counsel understand the rule laid down in that case to mean that the setting forth of the assignment of errors in the *brief* "will ordinarily be enough."

Of course, in the light of the recent decisions of the Court, it behooves counsel to follow the suggestion of the Court by filing assignments of error in the Court below and by having them included in the transcript, but it is submitted that the requirements announced first in the Columbia Heights Realty Company case should not be given a *retroactive* effect for the purpose of dismissing an appeal which had been pending in this Court for more than a year *prior* to that announcement.

Section 11 of the Act approved March 3, 1863 (12 Stat., 764), establishing the Supreme Court of the District of Columbia, provided as follows:

> "Sec. 11. *And be it further enacted*, That any final judgment, order, or decree of said Court may be re-examined and reversed or affirmed in the Supreme Court of the United States, upon writ of error or appeal, in the same cases and in like manner as is now provided by law in reference to final judgments, orders, and decrees of the Circuit Court of the United States for the District of Columbia."

The earliest cases to come before this Court on writ of error or appeal from the Supreme Court of the District of Columbia are the following, and examination of the records

therein shows that *no assignments of error* were incorporated in the Record coming from the lower court, to wit:

Brown vs. Wiley, 4 Wall., 166; Vol. 9, printed Records October Term, 1866, p. 5942.

Purcell vs. Miner (Coleman), 4 Wall., 513, Vol. 6, Records of 1866, p. 3420.

Holloway, Com'r Patents, vs. Whiteley, 4 Wall., 522, Vol. 4, Records of 1866, p. 1954.

Washington, etc., Packet Co. vs. Sickles, 5 Wall., 563, Vol. 5, Records of 1866, p. 3040.

U. S. *ex rel.* McConnell vs. Edmunds, Commissioner of General Land Office, 5 Wall., 563, Vol. 8, Records of 1866, p. 4825.

Thompson vs. Riggs, 5 Wall., 663, Vol. 8, Records of 1866, p. 4852.

U. S. *ex rel.* Crawford vs. Addison, 6 Wall., 291, Vol. 5, Records of 1867, p. 3218.

So far as the personal knowledge of the undersigned goes, and upon information obtained from the senior members of the bar of the District of Columbia, it is believed that prior to the decisions of this Court in the Columbia Heights Realty Company and the Briscoe cases, in every case coming to this Court from the courts of the District of Columbia, either by appeal or by writ of error, since 1863, the *only* assignments of error were those made in the *brief*.

When the Court of Appeals of the District of Columbia was established, the same provisions governing writs of error and appeal with relation to the Supreme Court of the United States were carried into the later enactment.

Attention is called to these acts because they show that there has been no change in the *law* itself, and also show, in connection with the records of this Court, that the *con-*

struction of the law, heretofore followed by this Court on this point has for nearly *fifty years*, at least, been such as to render assignments of error in the *brief* entirely sufficient. This is what may be termed a continuing contemporaneous construction of the law, which has obtained in this particular jurisdiction for nearly a generation, and while now held by this Court to be erroneous, it is nevertheless one which has been uniformly followed by the courts of the District of Columbia for this extended period.

In view of these facts, and of the further fact that this Court expressly reserves the right, under its rules, to consider any case regardless of whether there is *any* assignment of error, we feel confident that the Court will not now deny a full hearing to parties whose cases were before the Court, under the long-continued practice noted, *prior* to the decision in the Columbia Heights Realty Company case.

It would be obviously improper to attempt in this brief in opposition to the appellee's motion to dismiss, to go into the merits of the case in any respect, but counsel feel warranted in making the statement, based on the Record before this Court, that appellants have been for years awaiting opportunity to bring this case before this Court; they have been prevented because on two appeals to the Court of Appeals of the District of Columbia the decrees rendered by that Court were twice of an interlocutory nature, remanding the case to the Trial Court for further proceedings.

On two appeals from the Trial Court to the Court of Appeals, appellants prevailed in part, the Court of Appeals twice reversing the decree of the Trial Court and directing further action.

It would seem obvious that, as the rule laid down for guidance of members of the bar of the District of Colum-

bia in the Columbia Heights Realty Company case was what may be termed a *construction* of two rules of this Court, neither of which is in itself entirely clear of application in the absence of such authoritative construction by this Court, as the actual practice for a long term of years had been to incorporate assignments of error only in the briefs in equity cases appealed from the Court of Appeals of the District of Columbia; as the case at bar was docketed in this Court over a year prior to the warning sounded in the Columbia Heights Realty Company case; as the preparation of the Record for this Court and the continuing of the supersedeas bond has cost the appellants hundreds of dollars; as the case is now practically ready on the calendar of this Court for hearing; as the principles of law involved are of far-reaching importance and interest to members of the legal profession, involving what may be termed the general law of legal professional partnerships, which has not been heretofore the subject of express decision by this Court, the motion should in fairness be overruled, and this Court should avail itself of the provisions of Rule 21, to entertain jurisdiction to hear this case, as a matter of justice to the appellants, who have expended a large sum in preparing the case for final presentation to this Court to the end that there may be a decision by the highest court of the land upon points of the law wherein all members of the bar are deeply concerned.

AS TO APPELLEE'S MOTION TO AFFIRM.

Replying to the appellee's argument in support of his motion to affirm, on the ground that the questions here involved are merely of fact, aside from some unimportant questions of law of the ordinary kind commonly occurring, appellants call to the attention of the Court the fact that this case presents three points of law and equity.

These three points which challenge the correctness of the appellee's statement above noted, are:

1. Error in failing to hold that a partnership is necessarily dissolved by death of a partner.

2. Error in allowing interest on an unliquidated partnership account prior to final decree.

3. Error in disregarding the gross laches of complainant in the assertion of an obviously speculative claim, acquired for a nominal consideration.

Detailed examination of the evidence is not necessary to show the commission of these errors. They are plain on the face of the auditor's reports, and of the decrees. Hence, the case might properly be considered by the Court, even in absence of any assignment of error, each error being such a "plain error," as the Court reserves the right to consider independently of *any* assignment.

In view of the previous construction of the law and rules of this Court, and of the presentation of this case solely on important points of *law* and *equity*, and *not* on allegations of error of *fact*, it is prayed that the appellee's motion to dismiss the appeal and to affirm be overruled.

Respectfully submitted,

A. S. WORTHINGTON,
CHAS. F. CONSAUL,
Solicitors for Appellants.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1911.

No. 38.

CHARLES F. CONSAUL AND IDA M. MOYERS, Administrators of the Estate of Gilbert Moyers, Deceased, *Appellants*,

vs.

HORACE S. CUMMINGS, Administrator of Estate of George B. Edmonds, Deceased, *Appellee*.

BRIEF FOR APPELLANTS.

The appeal now before this Court was taken from the decision of the Court of Appeals of the District of Columbia, rendered March 12, 1909 (p. 726, Record). That decision, however, was a purely formal one, made after certain proceedings in the trial court, which had been taken

after two decisions by the Court of Appeals, rendered at different times, reversing the action of the trial court in various particulars, and remanding the case for further proceedings.

In order to arrive at a complete understanding of the position taken in the case by the Court of Appeals, therefore, as stated in the decisions accompanied by opinions, it will be necessary to refer also to the opinion of the Court of Appeals, rendered May 24, 1904 (24 D. C. App., 36), and to that rendered March 10, 1908 (31 D. C. App., 540), and contained on pages 703, *et seq.*, of the record.

It will be noted that all the decrees of the Court of Appeals up to the merely formal decree of March 12, 1909, were interlocutory in their character, each of said decrees remanding the cause for further action. Hence, it was impossible for appellants to bring the case before this Court until after said decree of March 12, 1909.

The original bill in this case was filed in the Court below by Horace S. Cummings, as administrator of the estate of George B. Edmonds, deceased, against Gilbert Moyers, the original defendant, during his lifetime, on the 16th day of September, 1899.

Gilbert Moyers died on June 13, 1903, and the appellants, Charles F. Consaul and Ida M. Moyers, administrators of his estate, were substituted as parties defendant, and have since represented the estate of their decedent in this cause.

The original bill alleged that the decedent, Edmonds, and the defendant, Moyers, were special partners in the prosecution of certain claims against the United States, commonly called "Civil War Claims," for property taken from claimants during the late Civil War for use of the Federal Army. According to the allegations of the original bill, Edmonds and Gilbert Moyers, on February 6, 1888, entered into a certain agreement in writing, reading as follows:

"AGREEMENT.

"Know all men by these presents, in duplicate, that the undersigned, attorneys of Washington, D. C., are special partners in the prosecution of the cases named in the schedule hereto attached now pending before the United States Court of Claims and the Congress of the United States, the fee agreed to be paid by the client in each case being the percentum of whatever may be recovered as is stated herein, and the agreement between the undersigned being that each shall have half of said fees and that each shall pay one-half of the expense incident to the prosecution of the same, which expense is not to exceed two and a half per cent of the amount that may be allowed upon said claims.

"And it is hereby agreed and understood that the said Gilbert Moyers shall represent and be associated with me in the prosecution of said claims before the Court of Claims and the Congress of the United States as joint attorney of record.

"It is hereby understood and agreed that the undersigned Gilbert Moyers is to advance the expenses incident to the prosecution of said claims.

"Witness our hands this 6th day of February, 1888.

"(Signed) GILBERT MOYERS.
"(Signed) GEO. B. EDMONDS."

On page 161 of the record is found the form of agreement first proposed by Edmonds to Moyers, which Moyers rejected, and it will be noted that there are some very material differences. The paper tendered by Edmonds proposed to relieve him of all future expenses, that powers of attorney should remain in Edmonds' hands and he to do no work, all of which provisions were omitted from the final agreement, showing that these terms were *not* accepted by Moyers. The agreement *proposed* by Edmonds reads as follows:

EDMONDS' PROPOSED AGREEMENT.

"Gilbert Moyers & Geo. B. Edmonds, agrees to prosecute the following cases and divided the fees set opposite of each case equally between them.

"Mr. Moyers will be at all future expenses in every respect in prosecuting every case, and no future expenses shall be required of said Edmonds. But the expenses which said Edmonds has been to will be required from said Moyers.

"The powers of attorney which was issued to said Edmonds shall be retained by him, and he shall have the power to collect all sums that shall be awarded on these cases or any one of them.

"Said Moyers shall be to all the trouble, expense, clerk hire, office room, &c., for collecting those claims, and Edmonds shall only do what he feels disposed to do.

"In case said Moyers does not deem it advisable to prosecute any case, he shall surrender ..... or to said Edmonds, and in any such case no expense shall be required from said Moyers."

The agreement of special partnership between Moyers and Edmonds involved the prosecution of claims against the United States of the class usually known as "War Claims," being for army supplies taken from citizens in the Southern States during the Civil War.

Their prosecution is rather involved, and in every instance it is necessary to secure permission of Congress to present the claim to the Court of Claims. This permission, when given under what is usually termed the "Bowman Act," of March 3, 1883 (22 St., 485), is evidenced by an order of the Committee on War Claims of the House of Representatives, transmitting the claim to the Court of Claims for findings of fact. The usual practice of Edmonds in securing this Congressional action was to secure the presentation of a formal petition in behalf of the claimant.

When a claim is referred to the Court of Claims under what is known as the "Tucker Act," of March 3, 1887 (24 St., 505), a private bill is introduced for relief of the claimant, supported by affidavits or *ex parte* proofs, making a *prima facie* case for reference, and then a resolution of the House wherein the bill is pending is necessary to the reference.

The Court of Claims has no jurisdiction to enter final judgment in these cases, but may merely find the established material facts for the information of Congress. The proceedings in the Court of Claims are the same in form as in other classes of claims, however, depositions being taken in presence of opposing counsel, with privilege of cross-examination to each side. Every case is controverted and opposed by attorneys under direction of the Attorney-General.

Favorable findings of fact do not mean payment of the claim at any certain time, and there is no certainty that it ever will be paid, that resting solely in the legislative will of Congress. Appropriations were made for payment of such claims, by Acts of March 3, 1891 (26 St., 1445); March 3, 1899 (30 St., 1161); May 27, 1902 (32 St., 207), and February 24, 1905 (33 St., 743), it having now been over six years since such an appropriation was made.

Attached to the original bill of complaint was a certain list or schedule of collected claims alleged to have been embraced in said partnership agreement, and which claims had been collected by Moyers as the result of an appropriation by Congress made by Act of March 3, 1899, it being alleged by complainant that as administrator of said deceased partner, Edmonds, complainant was entitled to one-half of the fees collected in the matter of said claims. The original bill also prayed a general partnership accounting, and that the defendant be required to pay into the hands of

receivers the fees then in his hands collected in said alleged partnership cases.

It is unnecessary to recite the history of the case in detail.

Defendant was required to turn over to receivers certain fees and the receivers also collected certain other fees.

The case was made the subject of decrees and of appeals to the Court of Appeals, the decree of the trial court being in each instance materially modified on defendant's appeals.

Some of the claims alleged in the bill to be partnership claims were found not to have been prosecuted *at all* by Moyers, but to have been collected by *other* lawyers, strangers to this case (p. 208, Record).

Gilbert Moyers died in 1903, and some further claims alleged to be covered by the partnership agreement were collected in 1905, by the firm of Moyers and Consaul, the members of which happened to be administrators of Gilbert Moyers, and those cases were also held subject to a division with the complainant. The supposed basis of the suit is what may be termed a continuing one, as it has been held that if the firm of Moyers and Consaul, as a firm, collects any claims which were once in the hands of the Moyers-Edmonds partnership, the firm of Moyers and Consaul must account for such fees.

The second appeal was decided by the Court of Appeals, March 10, 1908 (p. 703, Record). After restatement of the account on remand, a further appeal was taken, in order to bring the case before this Court, the last and final decree of the Court of Appeals being purely formal.

This being an equity suit, it is a material fact deserving of notice at the outset that, while complainant's formal and ostensible appearance in the case is that of an *administrator* seeking to protect the rights of the estate of his decedent, yet that apparent fiduciary capacity of complainant, Cum-

mings, is *only* apparent—not real—as he has admitted under oath that *he is the sole party in interest*, and that he has an *assignment* of all interest of the next of kin, James B. Edmonds, in the estate of the decedent, George B. Edmonds (pp. 30-50-51, Record). Complainant has also admitted that the consideration for the assignment was the indebtedness of the decedent to complainant, amounting to *"perhaps several hundred dollars,"* as testified by complainant, or as testified again by him, on same page of Record (p. 50), "a small amount." On p. 51 of Record complainant would not deny that the possible net proceeds of this litigation would belong to him *individually*, under his assignment mentioned.

Attention is specially directed to this phase of the case at the outset, as it shows the claim presented to be purely *speculative*, prosecuted by one having no intention of serving anyone save himself, and the only consideration, if any there be, for the assignment, was his agreement to clean up all debts of the decedent out of what might be realized in this proceeding, although complainant admitted that he *knew of no debts* save that alleged to be due *himself* (p. 51, Record).

It will be noted that among the material facts shown by the Record, the following would seem to be the most important:

The agreement of special partnership was made between Moyers and Edmonds, February 6, 1888. It is to be observed that the agreement is silent as to the division of work between the two special partners.

After making said agreement it appears that Edmonds occupied himself with the claims, in the only manner then possible, *i. e.*, that of presenting petitions to Congress praying the reference of the claims to the Court of Claims under the terms of what is commonly called the "Bowman Act" of March 3, 1883.

It appears that after entering into said agreement Edmonds, who was impecunious, called upon Moyers from time to time for comparatively small sums of money, ranging usually from $5.00 to $20.00 (pp. 247-248, Record).

January 24, 1891, Edmonds was adjudged insane by a jury of the District of Columbia, and on January 31, 1891, Horace S. Cummings, the present administrator of Edmonds, was appointed his committee (p. 165, Record).

Comparison of dates of said lunacy proceedings with the book entries showing payments by Moyers to Edmonds, above referred to, shows that Moyers continued to make payments to Edmonds *after* the lunacy proceedings mentioned, and that after Edmonds had been thus adjudged insane, Moyers advanced him by way of loans, the sum of $200.00 in the year 1891, and the sum of $430.00 in 1892. Mention is made of these circumstances as going to show that Moyers had no knowledge of the lunacy proceedings, and that evidently Edmonds was under no restraint, but was still going about transacting business, at least to the extent of securing money from Moyers. The testimony of Mr. Cummings, the complainant (p. 173, Record), also shows that Edmonds went about at will, apparently spending part of his time in Washington and some in Virginia.

It further appears that after Edmonds had been adjudged insane, and also after the payment by Moyers to Edmonds of a total of about $900.00, Moyers attempted to purchase from Edmonds all Edmonds' interest in the claims covered by the partnership agreement, and pursuant to said attempt, actually paid Edmonds the sum of $500.00 in one payment (Answer, p. 9; Testimony, pp. 56, 66, 71, Record). As to the making of these various payments by Moyers to Edmonds, there does not seem to have ever been

any dispute, and the courts which have passed upon the case have all agreed that said payments were made, aggregating a total of $1,470.00, including said last payment of $500.00 (Auditor's Report, p. 214, Record).

After said last-mentioned payment was made Edmonds seems to have disappeared from Moyers' office, and was not seen there after this time, the payment occurring in 1892.

Edmonds died in Virginia, October 31, 1896 (p. 26, record).

In the summer of 1899, the complainant, acting by counsel, demanded an accounting from Moyers, which was refused, and thereafter suit was brought.

Counsel for appellants deem the matter of dates of moment for reasons which will appear in the assignments of error.

ASSIGNMENTS OF ERROR.

Appellants assign error in the decree from which appeal is taken, as follows:

First Assignment of Error.

It was error NOT to hold that the special partnership agreement between Gilbert Moyers and George B. Edmonds, forming the basis of this suit, was dissolved either by the adjudicated insanity of Edmonds, in 1891, or at any rate by his death, in 1896, and in NOT holding therefore, that the utmost measure of recovery by the estate of Edmonds would be one-half the reasonable value of services rendered by the special partnership prior to such dissolution, less one-half partnership expenses incurred, and less advances made by Moyers to Edmonds.

See: Special-partnership agreement, P. 2, record.
Edmonds adjudged insane, in 1891, P. 165, record.
Edmonds died Oct. 31, 1896, P. 26, record.

SECOND ASSIGNMENT OF ERROR.

It was error to allow any interest to the complainant (appellee) on any sum found to be due as the result of the proceedings had, from a date prior to the entering of the FINAL DECREE pursuant to the mandate of this court.

(See auditor's report filed June 2, 1908, pp. 717-718, allowing $3,674.90 interest on some items as from Sept. 16, 1899, date of filing the bill, and allowing $65.72 interest on other items as from July 25, 1902.)

THIRD ASSIGNMENT OF ERROR.

It was error not to hold that the bill should be dismissed for lack of equity in view of the obvious laches of the complainant.

See: Merrill claim collected in 1892, P. 13, record.
Cummings appointed committee for Edmonds Jan. 31, 1891, P. 165, record.
Partnership agreement in Cummings' hands in 1892, P. 26, record.
Edmonds died in 1896, P. 26, record.
Demand first made in June, 1899, P. 34, record.

ARGUMENT.

Assignment I.

It was error NOT to hold that the special-partnership agreement between Gilbert Moyers and George B. Edmonds forming the basis of this suit, was dissolved either by the adjudicated insanity of Edmonds, in 1891, or at any rate by his death, in 1896, and in NOT holding therefore, that the utmost measure of recovery by the estate of Edmonds would be one-half the reasonable value of services rendered by the special partnership prior to such dissolution of the special-partnership, less one-half partnership expenses incurred and less advances made by Moyers to Edmonds.

See: Special-partnership agreement, P. 2, record.
Edmonds adjudged insane, in 1891, P. 165, record.
Edmonds died Oct. 31, 1896, P. 26, record.

The point stated in this assignment was raised in this case as early as 1902 (see defendant's motion, p. 218, record), but it would appear that thus far no attention whatever has been paid to the law of partnership, in its plain application to this case.

The record in this case shows that the agreement of special partnership was entered into by Moyers and Edmonds on February 6, 1888. (See copy of agreement, p. 2, record.) It also appears that Edmonds was regularly adjudged to be of unsound mind on January 24, 1891 (p. 165, record). It further appears that Edmonds died while temporarily in Virginia on or about October 31, 1896 (p. 174, record).

While the relation between Moyers and Edmonds is termed a "special partnership" there is nothing appearing in this case to take it out of the application of the ordinary rules of partnership. The partnership was special only insofar as it was restricted, by the intention of the parties, to certain claims which were to be agreed upon.

Appellants' position is:

1. This special partnership, like any other partnership, ceased and terminated at latest with the death of Edmonds.

2. The partnership having thus been dissolved by operation of law, upon the death of Edmonds, his estate would at most, have a right to recover from Moyers or his estate, only one-half of the reasonable value of partnership services rendered during the existence of the partnership, viz., prior to the death of Edmonds, and even this distribution should be made only after deduction in favor of Moyers of his expenses incurred in the prosecution of the partnership claims or business.

That the death of a partner dissolves a partnership is elementary. This court has expressly so held in the cases of Scholefield and Taylor vs. Eichelberger, 7 Peters, 586.

and Burwell vs. Cawood, *et al.*, 2 How., 560-576. In the latter case the following explicit statement is made:

> "By the general rule of law, every partnership is dissolved by the death of one of the partners."

See, also to same effect:

Davies vs. Christian, 15 Gratt. (Va.), 11.
Gratz vs. Bayard, 11 S. & R. (Penna.), 41.
Knapp vs. McBride, 7 Ala., 19.
Goodburn vs. Stevens, 5 Gill. (Md.), 1.
Williamson vs. Wilson, 1 Bland (Md.), 418.
Griswold vs. Waddington, 15 Johns. (N. Y.), 82.
White vs. Union Ins. Co., 1 N. & McC. (S. C.), 559.

In Story on Partnership (7th ed.), section 317, the law is stated as follows:

> "Sec. 317. DISSOLUTION BY DEATH. In the next and last place, as to a dissolution by the death of one of the partners. There is no doubt that, by the principles of the common law, the death of any one partner will operate as a dissolution of the partnership, however numerous the association may be, not only as to the deceased partner, but as between all the survivors."

In Parsons on Partnership, the same statement is made, as follows, being section 342 (4th ed.):

> "DISSOLUTION BY DEATH. What we said of the necessary dissolution of a partnership when any change is made in it, is true of the change caused by the death of a partner. Dissolution follows immediately and inevitably."

In Ames vs Downing, 1 Bradf. (N. Y.) 321, it was stated:

> "No doctrine is more universally established than that by the death of any one of the partners the partnership is *ipso facto* dissolved."

As the special partnership between Moyers and Edmonds was dissolved by Edmonds' death, October 31, 1896, the question arises, as to the measure of recovery by Edmonds' estate on his interest in firm business.

In case of Babbitt vs. Riddell's Executors, 1 Grant's Cases (Pa.), 161, two lawyers, partners, had in their charge a certain cause, under an agreement for a fee of $500.00, contingent upon success. The case was tried by the firm in the lower court, but while the suit was pending on appeal, one of the partners died. The surviving partner made a new agreement with the client, whereby the agreed fee was to be paid to the surviving partner, he agreeing to settle with the estate of the deceased partner. The suit was presented on appeal by the surviving partner, the case was won, and he received the agreed fee. He offered less than half the fee to the executors of his deceased partner. The executors sued for half of the fee.

In passing upon that case the court said:

> "The survivor having completed the service and received the compensation, must pay to the representatives of the deceased, *so much as is equivalent to his portion of the work done*, and such was the instruction of the court to the jury."

In Justice vs. Lairy, 19 Ind. App., 272, 277, 278, the law firm of Justice and Lairy rendered services in a certain case. Then Lairy was made a judge, that fact operating to dissolve the partnership. Justice continued the case and rendered a final bill in two items, asking $65 for services rendered by the firm, and $180 for his own services rendered after dissolution of the firm. Lairy contended that it was

the duty of Justice to continue the case to final determination, without extra compensation, and that he was entitled to share entire fee.

The court held that Lairy's interest was only in the fee earned *before dissolution* and on this point said:

> "It needs no citation of authorities to the effect that as a general rule in an ordinary partnership a partner is not entitled to compensation for services rendered in closing up partnership business, and that in the absence of a contract one partner who does a larger share of the work than his co-partner cannot recover compensation for such extra work. The large number of cases cited by counsel for appellee in support of the above rule are cases involving some kind of mercantile associations. But we do not think the rules governing such associations are controlling in all respects in law partnerships. Thus it is said that a law partnership does not confer on any of the partners the extensive powers of mercantile associations, as to binding each other in the ordinary course of business by bills of exchange and like matters. Weeks on Attorneys at Law, Sec. 244. See Osment vs. McElrath, 68 Cal., 466, 58 Am. Rep., 17, 9 Pac., 731; Starr vs. Case, 59 Iowa, 491, 13 N. W., 645.
>
> "And there are exceptions to the above rules concerning compensation in commercial partnerships, as where a surviving partner carries on the partnership business in order to complete the enterprise in which the partnership is engaged, he will be allowed compensation. 17 Am. and Eng. Ency. of Law, 1183, and cases there cited. * * *
>
> "But in the case at bar, aside from the fact that the incapacity to continue in the case was self-imposed by appellee, there was no value in the unfinished case to an attorney, except the value of professional services to be rendered. Whether it should have any value depended entirely upon the professional skill of the attorney rendering the services. So that the reason of the rule that no compensation is allowed a surviving partner cannot be said to apply in all respects to a professional partnership."

In support of the position so taken, the court cited and quoted from the case of Denver vs. Roane, 99 U. S., 355.

The same point was incidentally involved in case of Starr vs. Case, 59 Iowa, 491, cited in Justice vs. Lairy. In that case it was held that the surviving partner of a law partnership could not charge a commission for collecting in the *accounts due the firm*, but the language used by the court made it plain that the court intended that for services rendered by the surviving partner after dissolution of the firm, in any cases *handled for clients*, the *surviving partner should alone collect*, it being plain that the court distinguished between fees earned in a case *before dissolution*, which fees belonged to the firm, and fees earned in the *same case after dissolution*, which belonged solely to the surviving partner.

In Rowell vs. Rowell, 122 Wis., 1, 24, 25, allowance in a large sum was made to surviving partners who had continued the firm business, for their personal services after dissolution, on the theory that the complainant in seeking equity, must also accord equity to the defendants.

In Lamb vs. Wilson, 3 Neb. (Unof.), 496, 505, a law firm of three members was dissolved, each partner taking in hand certain pending cases to be continued by him, and to account for fees secured. On the first hearing it was held that the agreement operated to dissolve the partnership, and on that theory it was stated:

> "The rule of law is well settled by the weight of authority that neither partner of a dissolved firm is entitled to compensation for services rendered in winding up the partnership affairs unless it is expressly agreed otherwise or can be fairly implied from the circumstances. It seems, however, that the rule should not be extended beyond the requirement of merely wind-

> ing up the partnership affairs by collecting its outstanding claims, paying debts and distributing the surplus among the members, and that when it appears that time, skill and labor have been expended by a partner in the continuance of a partnership business which inures to the general benefit, he ought to receive from the profit of his skill and labor, a reasonable compensation varying according to the nature of the business, the difficulties and results of the undertaking and its necessity and desirability. While few cases are found which directly support this view, it seems to us to be founded upon the plainest principles of equity and justice, especially when applied to a partnership among professional men where the profits are almost wholly the result of professional skill and labor.
>
> "This exception to the general rule is suggested, but not decided, in Denver vs. Roane, 99 U. S., 355." * * *

It is true that on rehearing, the case was remanded for a general accounting, and it was decided that the partnership continued as to the pending cases, owing to the terms of the very *agreement of dissolution.* The decision on rehearing, however, did not retract anything previously stated as to the general legal principle noted. See, also, Lamb vs. Wilson, 98 N. W., 37, wherein the Supreme Court of Nebraska approved the action taken.

In Vanduzer vs. McMillan, 37 Ga., 299, it was held that if the surviving partner in a commercial partnership happened to be a lawyer, and if in order to realize on firm assets, he had to bring suits and conduct them as an attorney at law, he would be entitled to charge the same commission as any other lawyer would have charged.

In Royster vs. Johnson, 73 N. C., 474, 475, the Supreme Court of North Carolina said:

> "The English doctrine that executors, trustees, surviving partners, etc., are not entitled to commissions or compensation for their services, is not suited to this country.

"It is suggested in Boyd vs. Hawkins, 2 Dev. Eq., where the cases on this subject are cited and commented upon by Chief Justice Ruffin, as a reason for the English doctrine, that persons acting in such fiduciary characters are not, in England, practically to any trouble or expense about their trusts, because they manage the whole business through attorneys, &c.

"But it is entirely different here. And following the suggestion of Chief Justice Ruffin, and the tendency of legislation in this State providing compensation for executors, administrators, &c., we see no reason why a surviving partner should not be allowed reasonable compensation for his services, in winding up the affairs of the partnership.

In case of Newell, admr., vs. Humphrey, 37 Vt., 265-270, a commercial partnership was involved, the business being that of buying and selling cattle on commission. One of the partners died. In settling the partnership affairs, the commissions on inchoate transactions were considered partnership assets, *but* the surviving partner was allowed for his services and expenses in completing such transactions.

In the case of Zell's Appeal, 126 Pa. St., 329, 333, 334, Zell, as surviving partner of Clark and Zell, mercantile partners, prosecuted certain firm claims or demands to a final settlement, whereupon the heirs of Clark sued Zell for the share of their decedent in the partnership funds thus coming into Zell's hands. In the trial court it was decided that the fund was a partnership fund and that it should be divided, allowance being made to Zell for his expenses incurred in the litigation. The upper court stated, however:

"The complainants come into equity to claim their share of the money Zell had succeeded in getting. In equity, as the master found, they were bound to reimburse him for their fair share of the expenses he

had incurred in getting it. Why should they not also in equity reimburse him for his time, labor and judgment of which they now claim the fruits. * * * On this point the master finds:

> "'Mr. Zell is entitled to all credit for the energy and determination with which he carried on these proceedings and finally brought them to a successful conclusion.'
>
> "The Clarks hindered instead of helping him, and now that they have turned around, and elected to come in under him and affirm his action they ought to pay him liberally."

In finally disposing of the case the Supreme Court of Pennsylvania held that the surviving partner, Zell, should receive *for his services*, the same fee as the leading counsel in the case, thus allowing the heirs of Clark only $2,000.00 instead of $6,000.00 which was allowed them below.

We pause here for a moment to ask attention to the very striking similarity between the Zell case and the case at bar.

In the case at bar it is plain that Edmonds did not even turn over to Moyers the powers of attorney and fee agreements which he had with claimants, so that when Moyers settled some of the claims with claimants, after death of Edmonds, he was without papers necessary to prove what the original fee agreement was.

In other words, in the case at bar, Edmonds, and his committee and administrator, held back all papers which they had, and which might have been of use to Moyers in these cases, saying nothing to Moyers as to their having any such papers, and Edmonds' committee and administrator remained silent until the profits had been actually earned and collected by Moyers. In this regard the case at bar is on all fours with the Zell case, where the representatives of the deceased partner contributed nothing to aid the

surviving partner, but, on the contrary, rather hindered him until he had actually achieved success, whereupon they turned about and demanded a share of what the surviving partner had secured.

As is a matter of statutory history of which the Court may take judicial cognizance, no appropriations were made by Congress for payment of findings of the Court of Claims under the Bowman and Tucker Acts, from 1891, until 1899, a period of *eight* years, during which long period there was never any certainty that these claims would *ever* be paid, yet during this period of uncertainty and lack of money, Col. Moyers, with unflinching determination and at great pecuniary sacrifice, carried on the prosecution of these claims, his unflagging industry and perseverance in the face of greatest discouragement finally resulting in collection of the claims involved. These facts assuredly place the case at bar on all fours with that presented in the Zell case, *supra*, and the case at bar should, in equity, be decided in the same way, by an allowance to the estate of Moyers for his services rendered after dissolution of the partnership. Appellants do not ask a *liberal* allowance such as was mentioned in the Zell case, but merely ask that the value of services rendered by the firm or either member thereof, *prior* to the dissolution of the firm by Edmonds' death, be ascertained, and that one-half the value of such services be allowed complainant, subject to a deduction on account of Moyers' expenses: the portion of the fee thereafter remaining would be the share belonging to Gilbert Moyers or his estate, for services rendered *after* dissolution of the partnership.

In case of Maynard vs. Richards, 166 Ills., 466, the case of Zell's Appeal, *supra*, was cited approvingly, and was followed, the facts being that after a dissolution of a manufacturing partnership by death of one partner, the surviv-

ing partner, Richards, carried on for six years a suit which resulted in recovering $95,000.00 for the firm. It was held by the Court above that an attorney fee of $7,500.00 was a reasonable fee, and Richards himself, the surviving partner, *for his own services*, was allowed about *$8,000.00*, or somewhat *more* than the attorney was allowed. The language of the Court was as follows:

> "But the rule that a surviving partner is entitled to no extra compensation, applies to his services in winding up the partnership. The winding up or settling of the partnership affairs after death of one of the partners, may be said to consist, as a general thing, in selling the property, receiving moneys due the firm, paying the firm debts and the advances of the partners, returning the capital contributed by each partner, and dividing the profits. Where, however, the surviving partner renders services in excess of the mere winding up of the partnership affairs, he will, under certain circumstances, be entitled to compensation for such excess. (17 Am. & Eng. Encyc. of Law, 1154, 1183; 2 Lindley on Part., 1046; Collyer on Part., Sec. 328; Parsons on Part., Sec. 346.)
>
> "It is said, in Bates on the Law of Partnership, at section 773:
>
> > "'The rule applies merely to the simple and immediate winding up by collecting the assets, paying the debts and accounting for the surplus, as is necessarily involved in the creation of the partnership, and implied in the contract; but for time, skill, and labor expended beyond this, and inuring to the general benefit, the reason for the rule fails.'"

In Schenkl vs. Dana, 118 Mass., 236-238, the Supreme Judicial Court of Massachusetts, in allowing extra compensation to a surviving partner who had continued the business after dissolution of the partnership by death of one partner, said:

"There is no occasion in this case to question the general rule of law relied on, that upon the dissolution of an ordinary mercantile partnership by death, the surviving partner is not entitled as matter of law, in the absence of special agreement, to be paid for his personal services in winding up the business and disposing of the assets. But this rule, in its practical application to the final settlement of partnerships, must in equity be largely varied by the nature of the business carried on, the capital employed, the state of the accounts with the deceased partner, the necessity of continuing the business for the purpose of realizing most from the assets, and especially by the fact that such continuance is known and assented to by the legal representatives of the deceased partner.

* * * * * * * * *

"Under the general rule above stated, all that can be required of the surviving partner is that he proceed at once to wind up the partnership and account with the legal representative of the deceased partner."

Citing:

Willett vs. Blanford, 1 Hare, 253.
Lindley on Part. (3d ed.), 1034, *et seq.*
Story on Part. (6th ed.), Secs. 322, 343, 350.

In Cameron vs. Francisco, 26 Ohio St., 190, two surviving partners conducted a newspaper business for 5½ months after dissolution of the partnership, when it was disposed of, the good will constituting a large part of its value. The two surviving partners were receiving salaries during that time, and prior to the dissolution of the partnership, which salaries were paid out of the business. The Court below allowed each of these two surviving partners, in addition to his regular salary, the sum of $2,000.00 for his extra services during said period of 5½ months after dissolution of the partnership, and this action was affirmed by the Supreme Court of Ohio, saying:

> "But where the survivor is under no obligation to continue the business, but does so at his own peril, if the representatives of the deceased partner elect to share in the profits, a reasonable allowance may be deducted as a compensation to the survivor for his services."

We pause a moment to consider the above quoted statement of the law with regard to its peculiar application to the case at bar.

Suppose that Gilbert Moyers had never succeeded in collecting any of the alleged partnership claims, but that his prosecution of said claims, after the death of Edmonds, had resulted in nothing but outlay; or suppose that the fees secured by him in such of said claims as had been collected, had not equalled his total expenditure in their prosecution. In such event, would it be held by this Court that Moyers could have called upon Edmonds' administrator to pay one-half of such deficit or loss as might have resulted to Moyers from his continuing the prosecution of said claims after Edmonds' death?

Would it not have been maintained in such event by Edmonds' administrator that in proceeding with the prosecution of partnership claims after the death of Edmonds, Moyers had acted at his own peril and upon his own responsibility?

Would it not have been held by this Court, in such event, that there was no liability on part of Edmonds' estate to Moyers? Most assuredly this Court would have held that Moyers had proceeded at his own peril, and upon his own responsibility and that the loss incurred thereby must fall solely upon his shoulders, without recourse to the estate of his deceased former partner.

This proposition is as broad as it is long. If Moyers could not have bound the estate of Edmonds for *losses*

incurred after Edmonds' death, it necessarily follows, as the converse, that Moyers on the other hand, was not liable to the estate of Edmonds for anything *earned* by Moyers *after* Edmonds' death. The right to share in profits and the liability to share in losses are necessarily reciprocal in partnerships.

In this connection attention is asked to the fact that, while by the terms of the agreement, Moyers was to *"advance"* the expenses, that does not mean that he could not call on Edmonds later for Edmonds' share of what had been so advanced. It does not mean that Moyers was to *defray* the expenses, and no such construction has ever been given the agreement.

Quoting from the decision in Cameron vs. Francisco, *supra*, Moyers prosecuted the alleged partnership claims after Edmonds' death "at his own peril," and is, therefore, entitled to compensation for the reasonable value of his services rendered after Edmonds' death.

It matters not from which end the calculation is made, whether the value of Moyers' subsequently rendered services are first found and deducted before any division of the remaining fees, or whether the reasonable value of partnership services rendered during the continuance of the partnership (*i. e.*, prior to Edmonds' death) are first ascertained and divided. But it is submitted that complainant, *as complainant*, should be required to prove his own case, and he should, therefore, be required to show as his case, the reasonable value of services rendered by the partnership prior to October 31, 1896, the date of Edmonds' death.

In case of Thayer vs. Badger, Admr., 171 Mass., 279, it appeared that Hayden and Thayer were commercial partners. Hayden died and Thayer, as surviving partner, turned over the firm assets to a new firm of which he was

a member, for disposal. This new firm charged the old firm of Hayden and Thayer a commission of $650.00, which commission was contested by Hayden's administrator, at least as to Thayer's share therein, on the ground that as surviving partner Thayer should settle the firm affairs. The Supreme Judicial Court of Massachusetts, speaking by Mr. Justice Holmes, in affirming the allowance of said commission, said:

> "It is true, no doubt, that there is a disinclination to allow pay to a surviving partner for winding up (Dunlap vs. Watson, 124 Mass., 305); but the tendency is to deal with such questions on their peculiar circumstances, rather than by absolute rules."

In said case the following cases were cited: Turnbull vs. Pomeroy, 140 Mass., 117; and Robinson vs. Simmons, 146 Mass., 167-176.

In case of Turnbull vs. Pomeroy, *supra*, a surviving partner was allowed compensation for services rendered after dissolution of the firm.

In the case of Robinson vs. Simmons (146 Mass., 167-176), in speaking of the continuation of the business of a commercial partnership, after dissolution of the partnership by death of one of the partners, the Court said:

> "We think a just rule to be deduced from the authorities is, where there are no circumstances which render its application inequitable, the profits should be divided according to the capital, after deducting such share of them as is attributable to the skill and services of the surviving partner. When his good faith and fairness are not impeached, the most that the representatives of the deceased partner can justly demand is, that he should account to them for their capital, and, in addition, for whatever it has earned. This involves the necessity of inquiring how much

> of the profits is attributable to the services and skill of the surviving partner, and how much to the capital invested in the business. The latter portion of the profits shows what the capital has earned, and should rightfully be divided among the owners of the capital in proportion to their shares of the capital."

Referring to the rule set forth in said case of Robinson vs. Simmons, let us pause for a moment to consider its peculiar application to the case at bar.

When Edmonds died, what was *his capital* invested in the partnership business? It did not consist of his powers of attorney and fee contracts, because they were revoked and nullified by his death. The capital did not consist of his *services* because he was dead and could render no services. As his powers of attorney and fee contracts, and his personal services were all that he ever put into the business, it follows that, as his death revoked the powers of attorney and abrogated the fee contracts with claimants, his estate could not be said to have *any* capital thereafter in the partnership with Moyers. It being also obvious that Edmonds' estate never rendered any *services*, after Edmonds' death, it necessarily follows that in the case at bar Edmonds' estate was represented in the partnership after his death, *neither* by *capital* nor *services*, from which it is plain that his estate had *nothing* in the partnership or its earnings after Edmonds' death.

In Condon vs. Callahan, 115 Tenn., 285-291, the Court said:

> "Now, the general rule is that, as between partners, the surviving partner is entitled to make no charge for his services in winding up the partnership. Still, this rule does not apply to all cases but only to cases where the business is immediately put to an end and no further work is done, except to close up the matter of account as between the partners; pay the debts, and distribute the surplus, if any."

In support of this statement of the law, the Court quotes from Bates on Partnership, to the same effect, and cites:

> Brown vs. Tastet, 1 Jacob., 284.
> Cameron vs. Francisco, 26 Ohio St., 190.
> Newell vs. Humphrey, 37 Vt., 265, and numerous other cases.

The principle above stated by different courts of last resort is only the converse of the principle upon which we rely. In said cited cases it was decided that the reasonable worth or value of services rendered by the surviving partner after dissolution of the partnership should be allowed to the surviving partner. In the case at bar we state the same principle when we say that the total fee collected for legal services marks the total value of services rendered in the collection of a claim, and that Edmonds or his administrator is entitled to one-half the reasonable value of services *rendered by the special partnership of Moyers and Edmonds* (that is, by either or both members of said firm). After such proper and fair share of the total fee shall have been set over to the administrator of Edmonds, then it goes without saying that the remainder of such fee belongs to the estate of Gilbert Moyers, *on account of his services rendered after dissolution of the partnership.*

The same principle is suggested by this Court in the case of Denver vs. Roane, 99 U. S., 355. In that case a specific agreement had been made by the members of a law firm, as to division of fees in case of death of any partner, and the Court held that the division must be governed by that agreement, using the following language, the italics being ours:

> "So it is held that where partnerships are equal, as is true in the present case, and there is no stipulation in the partnership agreement for compensation to the surviving partner for settling up the partnership business, he is entitled to no compensation. This is the rule in regard to what are commonly called commercial partnerships, and the authorities cited refer to those. *There may possibly be some reason for applying a different rule to a case of winding up partnerships between lawyers and other professional men, where the profits of the firm are the result solely of professional skill and labor.*"

The same idea was suggested in the case of Sterne vs. Goep, 20 Hun., 397, in which case, after referring to the law of commercial partnerships, the following language was used, the italics being ours:

> "Whether the same rules apply to a partnership between lawyers where the profits of the firm are the products solely of professional skill and labor, need not now be discussed. *It would seem, however, to be a harsh rule which would require the surviving partner of a law firm to take upon himself solely the conduct of all pending litigation in the office at the time of his partner's decease, and devote his professional skill and labor through a possible period of years to the conducting and closing up of such litigation* for the benefit equally of his deceased partner, and with the obligation ultimately to account to his representative for an equal share of all the profits or results so earned. *It would seem that equity might discern some juster rule by which to ascertain and determine the rights of the parties to such a case.*"

In the case of Osment vs. McElrath, 68 Cal., 466, it was expressly stated by the Supreme Court of California that the Court below had followed the theory suggested by the

Supreme Court of the United States in the case of *Denver vs. Roane, supra,* and the State Supreme Court affirmed the action of the trial court, thus putting this theory of the law into actual application, in an adjudicated case.

It is to be further noted that in said case of Osment vs. McElrath, the facts were as follows:

Osment and McElrath were law partners in California; they dissolved their partnership by mutual consent, the retiring partner leaving the State; one of the partners agreed to continue the business left by the firm in his hands, and upon an accounting it was decided that he had collected the net sum of $7,000.00 in cases which had belonged to the partnership. It was further decided that the services of the continuing partner, rendered after dissolution of the partnership, were reasonably worth $2,000.00, which sum was set over to him before any division was made between the two former partners, the partner who had continued the business thus being given about two-thirds of the net fees collected.

Appellants ask in the case at bar that the principles of law as announced by various courts of last resort, without difference of opinion, and as suggested by this Court, and actually followed by the Supreme Court of California, be applied. If so applied in the case at bar this Honorable Court must be irresistibly led to the conclusion that, in claims found upon sufficient evidence to have been Moyers-Edmonds partnership claims, the fees collected should be divided between the estates of the two former partners as follows:

(a) To the estate of Edmonds, represented by complainant, one-half of the reasonable value of partnership services rendered prior to the dissolution of the partnership by Edmonds' death, less one-half of expenses incurred up to that time.

(b) To estate of Moyers, the remainder of the fees.

This will make Moyers' share the same as Edmonds', plus the reasonable value of the services rendered by Moyers after the dissolution of the partnership by Edmonds' death.

It is submitted by appellants that the rule found in Little vs. Caldwell, 101 Cal., 553-560, relied on below by appellee, is not in accord with the weight of authority nor with reason.

The basis of the decision in that case was admittedly the rule governing ordinary commercial partnerships, and that Court, instead of *benefiting* by the suggestion of this Court in Denver vs. Roane (99 U. S., 359), referred to that decision only as follows:

> "The rule is well settled in regard to commercial partnerships, that the surviving partner must complete all executory contracts of a firm which remain in force after the death of a partner, and must settle the business of the partnership without charge against the partnership for his personal services, and in the case of Denver vs. Roane, 99 U. S., 359, it was said that none of the adjudicated cases recognized any distinction in this respect between such partnerships and those entered into between attorneys for the practice of their profession.
>
> "And we know of no such distinction."

Aside from the obvious failure of the Supreme Court of California to grasp and to apply in that case the equitable theory suggested by this Court, and followed in a number of cases herein cited, it is further to be noted that in Little vs. Caldwell, it appeared explicitly that both members of that firm had been employed, by express contract, in the case there involved, and in this regard the Court said:

> "The contract by which Little and defendant were employed to conduct the litigation referred to in the complaint did not *ipso facto* become extinguished upon the death of Little. * * *"

The distinction in the matter mentioned between that case and the one at bar is obvious for in the case at bar the only contracts with claimants were between claimants and *Edmonds, individually*. The same comment applies to the case of Clinton vs. Clark, 83 Miss., 446.

Referring more particularly for a moment to one phase of the case, we ask attention to the cases above cited and to the obvious injustice of holding that a member of a law firm, upon the death of his partner, is to be considered under a life sentence to continue the practice of his profession in the matter of all cases in the hands of the firm at date of death of one partner, for the joint benefit of the surviving partner and the estate of the deceased partner. The mere statement of this proposition carries with it the evidence of its utter absurdity. The formation of law partnerships would become rare indeed were this announced as being the law of such cases.

We further ask attention to the fact that while the decisions above cited show that it is the duty of a surviving partner to *"wind up"* the firm business, it has never been held to be the duty of the surviving partner to *continue* the firm business.

In view of all the foregoing, we submit that this first assignment of error is well founded, and that the decree should be reversed.

As stated by the Court below and mentioned in our assignments of error below, it is apparent that Edmonds' principal contribution to the special partnership consisted of his powers of attorney from claimants and his fee agreements with the claimants. Further, it is a well estab-

lished principle of the law of agency that the death of either party to a power of attorney, operates to revoke such power of attorney. Therefore, when Edmonds died, his powers of attorney died with him. The mere fact that Edmonds had made Gilbert Moyers a special partner in any of these claims did not create any contractual relation between the *claimants* and *Moyers*, nor did it confer upon Moyers any authority which could survive Edmonds' death.

The relation between an attorney and a client is a strictly personal one, and Moyers' authority in the premises could not be any higher than its own source, which source was the powers of attorney to Edmonds. Hence, it follows that when Edmonds died, Moyers' authority in the premises, so far as concerned the special partnership, ceased and terminated.

The only circumstance under which a power of attorney can survive the death of either party is when the power is coupled with an interest, and even in such a case, it would be revoked by the death of the attorney or agent: it would survive only the death of the *principal*.

As to death operating to revoke a power of attorney not coupled with an interest, we refer to the leading case of Hunt vs. Rousmanier, 8 Wheat., 174, well known to this Court, which case has been uniformly followed by all courts. Further citation of authorities upon this point is not deemed necessary.

In the light of all the facts of this case, what remained as partnership assets at the death of Edmonds? The answer to this is plain. There were no partnership assets save the right to recover, in event of final collection of the partnership claims, for the value of services rendered by Edmonds or at his instance by the special partnership of Moyers and Edmonds.

The fact that some of the claimants chose to make Gilbert

Moyers their attorney after the death of Edmonds, in preference to some other attorney has no bearing whatever on the case. The record shows that a considerable number of claimants placed their claims in the hands of various *other attorneys who proceeded to collect the claims.* We refer to the case of Russell (p. 135, Record); J. L. Roberts (p. 136, Record); George Show (p. 136, Record); Ubele (pp. 136-137, Record); and M. C. Baylor (pp. 149-150, Record). Right here we ask attention to the fact that in the original bill filed in this cause, complainant alleged an interest in the fees in *21* claims enumerated in the schedule attached to the bill (p. 6, Record). Of said 21 claims alleged by complainant to be partnership claims, it has been found by the Court below that *5* were not represented *at all* by Gilbert Moyers, thus taking out 5 claims of the 21. We make mention of these facts as they show on the face of the record the utter worthlessness of the alleged Edmonds schedule of supposed partnership cases. It has been declared in error as to about *25 per cent* of the claims embraced in the original bill (Auditor's Report, p. 208, Record). It is also to be noted that still another claim (Johnson, Admr. of Heard, p. 708, Record) was eliminated from the 21 claims mentioned in the original bill, because it was not a partnership claim, thus taking *6* claims out of *21*, an elimination of nearly *30 per cent* of the claims embraced in said original bill as alleged partnership claims.

The claimants in those five cases merely exercised their unquestionable right to employ other and different counsel after the death of Edmonds; some employed one attorney, some another, and still other claimants saw fit to employ Gilbert Moyers, but they did not do so because of Edmonds or because of their previous employment of Edmonds. When Edmonds died, his authorization in the premises ceased, and each claimant thereafter employed whomsoever

he pleased to carry on the prosecution of his claim, and it was immaterial to Edmonds' estate what attorney thereafter conducted each claim. As before shown, Moyers was under no obligation to anyone to carry on any of the partnership claims; *in fact, he had no authority to carry them on* save as he received such authority directly from the claimants after the death of Edmonds.

As Edmonds could render no services in the prosecution of the partnership claims after his death, and as his only other contribution to the partnership, viz., his powers of attorney, died with him, there is nothing in this case to take it out of the ordinary rules of law partnerships, and it therefore follows that the special partnership was absolutely dissolved by the death of Edmonds, and, as before stated, all that his estate can claim from the estate of Moyers is one-half of the reasonable value of services rendered by the partnership prior to the dissolution of the firm by Edmonds' death, subject to the deduction before mentioned of one-half the expenses incurred by Moyers in the prosecution of the partnership claims, and also subject to Moyers' credit on account of moneys advanced to Edmonds.

In the light of the decisions of the lower courts and of the position all along taken by the complainant, that Gilbert Moyers and Edmonds were special partners, and as the written agreement is purely a special-partnership agreement, we do not see how it can be now contended by the complainant that this case is one of employment, but we will anticipate to this extent the possible reiteration of this theory by complainant.

The rights of complainant would be in no way enlarged even were this case considered as presenting an employment instead of a special partnership, for the following reasons:

If Gilbert Moyers was *employed* by Edmonds to prose-

cute the claims in the hands of Edmonds, then that employment ceased with the death of Edmonds for two different reasons:

1. As Edmonds' authority, conferred by powers of attorney, died when Edmonds died, there remained no authority vested either in Edmonds or his employee, Moyers, to further proceed with his claims. Therefore, Moyers could not have further acted in any of the partnership claims *as* employee of Edmonds, but must necessarily have thereafter acted under direct employment by the claimants, in which event the complainant would have no interest in any compensation secured by Moyers for any services rendered by him *after the death of his employer, Edmonds.*

2. Any relation of employer and employee existing between Edmonds and Gilbert Moyers at time of the death of Edmonds, terminated with the death of the employer.

The law of principal and attorney, before adverted to in considering this assignment of error, is decisive of the first point above suggested, and need not be now made the subject of further argument, as it is elementary that a power of attorney dies with the death of the attorney.

The general law of agency must govern the second point above mentioned.

Section 249, Mecham on Agency, reads as follows:

> "Upon the death of the agent invested with a mere power, the agency is terminated. There is then no one to exercise the derivative authority which must, of course, cease to flow. If the agent were one selected for his skill, judgment or discretion, this furnishes an additional reason why the authority should be held not to descend to the personal representatives of the agent, with whom the principal may be unacquainted and to whom he might be unwilling to confide the power."

See:

Gage vs. Allison, 2 Am. Dec., 682.
Merrick's Est., 8 Watts & Serg. (Penna.), 402.
Adriance vs. Rutherford, 57 Mich., 170.

The above quoted statement of the law of agency is peculiarly applicable to the case at bar, and it is unquestionably sound law and it shows to be unsound the contention of complainant that *after the death of Edmonds*, Gilbert Moyers continued to prosecute Edmonds' claims as the *employee* of Edmonds. From the foregoing it is evident that complainant can make nothing by contending for the application of the law of agency rather than of the law of partnership to this case.

It may be suggested that the Court of Appeals has held that the contractual rights and obligations of the special partners have been changed or waived by the contemporaneous construction of the partners themselves, as shown by the fact that Edmonds was not called upon to take any active part in the prosecution of the partnership claims, and that for this reason, neither his insanity nor his death operated to the injury of Moyers by depriving him of Edmonds' services.

In arriving at this conclusion the Court below fell into serious error, by ignoring the proven facts in the case.

As it was in the spring or summer of 1892 (pp. 56, 66, 71, Record) that Moyers attempted to purchase outright Edmonds' interest, it was natural that Moyers should not *thereafter* expect any aid from Edmonds. The same theory accounts for Edmonds apparent disappearance from Moyers' office at that time, for after that time neither Moyers nor Edmonds believed Edmonds to have any further interest in the business.

The testimony of complainant himself (pp. 292, *et seq.*, of Record) shows that Edmonds was taking action for purpose of securing reference of various claims to the Court of Claims, by Congress.

It will be borne in mind that in the earlier stages of prosecution of a war claim, that is about all that can be done. After reference to the Court of Claims, arrange-

ments may be made for taking depositions, and later briefs are to be filed and arguments made.

It is insisted that there is absolutely nothing in the Record to warrant the finding or even the inference that, *up to the date* when Moyers attempted to buy Edmonds' interest, in 1892, Moyers had ever taken such action as to indicate that he expected Edmonds to do nothing. Of course, *after* that date he could not expect Edmonds to take any part, and it would seem that from that date Edmonds never reappeared at the office of Moyers.

Attention is directed to the fact that prosecution of these war claims is a prolonged matter, and that the attempt to buy out Edmonds' interest occurred only four years after the agreement of partnership was made, and while most of the partnership business was still in a comparatively early stage.

If all these facts are given their proper effect, it is plain that there is nothing in the Record warranting the inference that the partners had, tacitly or otherwise, altered the terms of the very agreement whereon this suit is based.

If Moyers had been suited with the form of agreement originally tendered him by Edmonds, why did Moyers insist on changing it and making a new one? It will be observed, by comparing the *proposed* agreement with the agreement actually made, that Moyers *refused* to agree to Edmonds being relieved of any necessity for contributing his services in the partnership business, and in view of that refusal, it should assuredly take very strong evidence that he later assented to a tacit annulment of the contract in this regard. There *is no such evidence* in the case, however.

Assignment II.

It was error to allow any interest to the complainant (appellee) on any sum found to be due as the result of the proceedings had, from a date prior to the entering of the FINAL DECREE pursuant to the mandate of this Court.

(See auditor's report filed June 2, 1908, pp. 717-718, allowing $3,674.90 interest on some items as from Sept. 16, 1899, date of filing the bill, and allowing $65.72 interest on other items as from July 25, 1902.)

In this case it was obviously impossible for Moyers, the surviving partner, to strike any balance for purpose of ascertaining what sum was due the estate of his former partner, for the following reasons:

1. Moyers *thought* he had purchased all of Edmonds' interest in the partnership business, in 1892, and therefore denied that any further sum could be due Edmonds' estate. (Answer, p. 9, Record; Testimony, pp. 56, 66, 71, Record.)

2. Aside from Moyers' attempt to purchase Edmonds' interest, which failed because Edmonds had been previously adjudged insane, there was *serious doubt* as to what claims fell within the operation of the special-partnership agreement; and also as to whether or not Moyers was chargeable with all expenses in disallowed claims prosecuted on partnership account.

The very fact that the Court of Appeals twice reversed the decree of the trial court is very good evidence of the *uncertainty* of the relative rights of the parties. The complainant and defendant disagreed as to this, and the Court of Appeals and the trial court disagreed.

Hence, save by a final decree entered, it cannot be held that the sum due complainant (appellee) was ever liquidated or that any balance could be otherwise struck. This seems obvious.

It was first suggested by appellee in the trial court that interest should not be allowed one partner against the other until a balance had been struck. Appellants accepted that theory of the law, and in the Court of Appeals raised this point, which was overruled.

It may be stated with positiveness, as a general rule in this country, that interest is not properly allowable on running or open accounts, or on accounts which are unliquidated, or concerning which there is an honest dispute between the parties, and that interest is not usually allowable on partnership accountings until a balance has been struck.

So well established is the rule that it may be said to be a part of the law merchant of the United States, the only exceptions to the rule being found under specific statutes, or in some cases where there has been an obviously wrongful denial on part of defendant of a just demand, or a plain attempt to defraud plaintiff.

Attention is first called to the case of Gyger's Appeal, 62 Pa. St., 73.

In this case the master, on a partnership accounting, allowed a charge of about $1,000.00 interest against Gyger, and also some $200.00 interest against the firm. The Supreme Court held, however, that there should be no interest allowed either partner *until a balance had been struck*, and reversed the decree. In stating its conclusions, as above mentioned, relative to interest not being allowed until a balance had been struck, the Court said of Gyger (italics beings ours):

> "It was impossible for him to know at any time what the balance really was until it was finally ascertained and struck *by the master.*"

In Clark vs. Clark, 46 Conn., 586-590, the Court said:

"The mere fact that an account is unliquidated is often (though not always in this State) a decisive objection to the allowance of interest," citing 5 cases.

"It seems to us the objection is much stronger where, as in this case, no sum had ever been indicated by either party as the amount of the debt due for services till after the litigation had commenced."

In Imperial Hotel Co. vs. Claflin Co., 175 Ill., 119-124, the Court said:

"It was error, also, to include interest on the plaintiff's claim, it being an unliquidated account, and no express or implied contract to pay interest appearing from the evidence."

In Pieser vs. Minkota Milling Co., 94 Ill. App., 595-597, it was held that interest is not allowable at common law, and that further, where there is a *bona fide* dispute as to the account, the defendant cannot be charged interest for unreasonable or vexatious delay in settlement.

In Henderson Cotton Mfg. Co. vs. Lowell Machine Shop, 86 Ky., 668, the Court said:

"In case of an unliquidated claim, as upon a *quantum meruit*, interest is not allowable as a matter of law, or *prima facie*, because it does not necessarily follow that the duty has been imposed upon the debtor to pay it."

In Sweeney vs. Neely, 53 Mich., 421-424, which was a suit of partnership accounting, the Court said:

"Interest can never be allowed on an unsettled or an unliquidated account without an agreement, express or clearly implied, and the case must be a very strong one when it is between partners to warrant its allowance without express agreement to that effect."

and further held that until a "final settlement" of the partnership account neither partner is chargeable with interest on what he owes to the other partner or to the firm.

In Houston vs. Crutcher, 31 Miss., 51, it was held that an open account does not draw interest as a matter of right, either by statute or common law, but that interest may be allowed by way of *damages* for wrongful detention of an amount *known to be due.*

The case of Holden vs. Peace, 39 N. C., 223, was a partnership accounting where the statement of account was a mere matter of *arithmetic,* and it was there held that interest should be computed on the balance found to have been due at date of dissolution by death of one partner, the Court saying:

> "In Dexter vs. Arnold, 3 Mass., 284, Mr. Justice Story lays it down, that interest is not allowed upon partnership accounts generally, until a balance has been struck on a settlement between the parties unless the parties have otherwise agreed or acted in their partnership concerns."

In Pengra vs. Wheeler, 24 Ore., 532, the Court said:

> "There was no account due the plaintiff, so as to draw interest under the statute until the balance was ascertained (Waterman, Set-off, Sec. 19), and the allowance of interest to either party was error," citing Edmonstone vs. Thompson, 15 Wend., 554.

In Grubb's Appeal, 66 Pa. St., 117, in holding that interest should not be allowed on an account, the Court said:

> "The whole case is therefore to be likened in its results to the settlement of a partnership account, in which interest has no place until a balance has been struck."

In Stearns vs. Mason, 24 Gratt. (Va.), 484, it was held that interest should not be allowed prior to the entering of *decree,* where it was impossible for the parties themselves to fix exact amount of indebtedness, to fix which the Court proceedings were necessary, and the Court there said:

> "This court has repeatedly held that when accounts were unliquidated and disputed between the parties, interest ought not to be allowed," citing various cases.

In South Carolina vs. Port Royal, etc., R. R. Co., 89 Fed. Rep., 565, 574, the court said (italics being ours):

> "Interest charges. The accounts between the receiver and the Augusta Railroad Company were open accounts. * * * Never was there anything which could be called an 'account stated.' * * * Clearly, the compound interest cannot be allowed. *Nor should any interest be allowed.*"

In case of Haskell vs. Vaughan, 5 Sneed (Tenn.), 618, it was held, in effect, that a partner could not be heard to allege that the other partner owed him anything, after dissolution, until there had been a "general settlement," which means the striking of a balance.

See, also, to same general effect:

Rogers vs. Yarnell, 51 Ark., 198.
Heald vs. Hendy, 89 Cal., 632.
Raymond Bros. vs. Williams & Chapman, 40 Iowa, 117.
Williams vs. Hersey, 17 Kan. 18.
Ory vs. Winter, 6 Mart., N. S. (La.), 606.
Flannery vs. Anderson, 4 Nev., 437.
Edwards vs. Dargan, 30 S. C., 177.
Stamps vs. Tenn. Co., 59 S. W. (Tenn.), 769.

In short, the courts of at least seventeen States and one Federal court have held as contended by appellants in the case at bar, and the only cases where the rule stated has not been followed have presented unusual and special features which took the cases out of the operation of the rule.

In some cases it is true interest has been allowed in suits for partnership accounting, or on open accounts, but in every one of those cases there were peculiar circumstances which led the courts to believe that the party held chargeable with interest had been guilty of *misconduct*.

In Freeman vs. Freeman, 142 Mass. 98, the surviving partner was shown to have wound up the commercial partnership affairs save that he had failed to dispose of a certain patent, but continued to use that himself in manufacture. In view of his failure to completely perform the duty of winding up the partnership, he was held chargeable with interest from date of commencement of suit, evidently as what may be termed an equitable penalty for his misconduct.

In Banner vs. May, 2 Wash., 221, interest was allowed on an open account, but there the person so charged had been guilty of an attempt to defraud other creditors by participating in a fraudulent conveyance and sale.

In Ryan Drug Co. vs. Hvambsahl, 92 Wis., interest was allowed, but on the theory that the accounts should be deemed "accounts stated," concerning which there was *no dispute* between the parties.

Assignment III.

It was error not to hold that the bill should be dismissed for lack of equity in view of the obvious laches of the complainant.

Explanatory of this assignment, attention is called to the following facts:

1. Complainant was appointed committee of Edmonds, in 1891. (P. 165, record.)

2. The Susan Merrill claim, adjudged to have been a partnership claim, was collected in 1892. (P. 13, record.)

3. In 1892 James B. Edmonds, brother of George B. Edmonds, turned over to Cummings, as committee, the special-partnership agreement and other papers, thus advising Cummings of the existence of the partnership, and giving him a list of claims alleged to be covered by the partnership agreement. (P. 26, record.)

4. Edmonds died in 1896. (P. 26, record.)

5. No demand was made on Moyers for an accounting till June, 1899, seven years after collection of Merrill claim, eight years after Edmonds' adjudged insanity, and about three years after Edmonds' death. (P. 34, record.)

In connection with this assignment of error we ask attention to the attempted purchase by Moyers, in the fall of 1892, of all Edmonds' interest in the claims falling within the scope of the agreement of special partnership.

It is true that the Court of Appeals has stated that it did not consider that the purchase was made, but that was evidently its conclusion in the light of Edmonds' adjudged insanity prior to the date of the supposed purchase by Moyers. (Edmonds adjudged insane in Jan., 1891, p. 165, record; attempted purchase in 1892, pp. 56, 66, 71, record.) In other words, Edmonds then occupied the status of an insane person, and regardless of what may have been his actual mental ability to transact business, indicated by his apparent payment of his own bills, and the frequent securing of funds for his support from Moyers, and on account of that status, Edmonds was incapable, in the eye of the law, of selling out his rights to Moyers.

We concede this to be the law of the matter, but say that

the fact that Edmonds *did attempt* to sell and that Moyers *did attempt* to buy, accompanied, as it was, by the payment of the considerable sum of $500.00, which brought the total amount paid up to $1,470.00, is very material to the consideration of whether or not the great delay on part of complainant in making known his demand against Moyers, constituted laches in the light of all the circumstances.

Laches is a doctrine the application of which must generally depend upon all the circumstances of the case. A delay in making demand which might constitute laches in one case might not be so held in another, although the delay was the same when measured by the calendar.

As is known as an elementary principle of the law of partnership, the insanity of a partner furnishes good ground for a bill for dissolution of the partnership. It was a right of which Moyers could have availed himself had he been apprised of Edmonds' insanity and of the fact that Cummings, the committee, still claimed an interest in the claims covered by the special partnership agreement. It is but sensible to suppose that, had Moyers known the conditions then existing, he would have taken steps to protect himself in the premises, by insisting on a formal dissolution of the special partnership, in which event had it been deemed advisable to have Moyers continue the prosecution of any of said claims, he might have protected himself by making a reasonable agreement with Cummings, as Edmonds' committee, relative to the division of the attorneys' compensation. This would have been the course which would have instantly suggested itself to any reasonable man. It is unquestionably the course which Moyers would have followed, had he any intimation of the continuing claim of Edmonds in the business.

Moyers was prevented, in effect, from following this sensible course by the silence of Cummings, by Cummings'

failure to make known the facts, by his failure to inform Moyers that he must still account to Edmonds or his committee for a share in all fees which might be thereafter earned or collected on the partnership cases.

It is unnecessary, in order to arrive at the conclusion that this silence and inaction constituted laches such as should now bar this suit, to attribute to Cummings any unworthy and ulterior motive. It is sufficient that by his long delay in making known his claim of right, he worked injury to Moyers such as would naturally have been prevented by any sane man who had a knowledge of the demand or claim of right on part of Edmonds or his committee. It is obvious that, had Cummings been actuated by unworthy motives, he would have pursued the same course he did pursue, *i. e.*, he would have remained silent until Moyers, by his own professional labors and large expenditures, extending over a period of many years, had brought forth fruits, supposing them to be his own, and then for the first time Cummings would have made known to Moyers that his attempted purchase of Edmonds' rights was a nullity.

Relative to this phase of the case we call attention to the fact that the case at bar is *not the first* one to come before this court wherein an attempt has been made to perpetrate precisely this sort of a wrong upon a former partner. We refer to the case of *Baker vs. Cummings*, 169 U. S., 189.

That case was also a partnership case, Mr. Cummings the present appellee, being one of the former partners. He was complainant below, and secured a decree in the sum of $32,772.14. In that case this court, in its earnest endeavor to arrive at a conclusion which would be just to all parties, looked carefully into the record, and when the allegations of the bill and the testimony of Mr. Cummings had been subjected to the test of logical analysis and incisive reasoning by the present Chief Justice, nothing was left of Mr.

Cummings' case or of his testimony, save a few shreds which might be found clinging to some facts proven otherwise than by his own testimony.

In that case this court reversed the decree in favor of Mr. Cummings on the ground of laches, and in its discussion of that phase of the case said:

> "Apart, however, from the bar of the statute of limitations, the facts as to the full knowledge of the fraud, if any existed, by Cummings more than three years before the filing of his bill, and his conduct after he obtained it, his permitting Baker to go on and prosecute the claims as if they were his own, debars Cummings from invoking a court of conscience to put him in a much better position than he could possibly have occupied if he had spoken and asserted his rights in due season.
>
> "There cannot be a doubt that the right existed in Baker to have dissolved the partnership at any time. If this right on his part had been exercised, Cummings would not have been in a position to have availed himself of the labors of Baker in prosecuting the future claims to a successful culmination, and would not, therefore, have been a participant in the profits arising therefrom. If with a full knowledge of the fraud Cummings chose to remain silent, to permit Baker to go on with the prosecution of the claims, to incur the expenditure of time and labor not only in the cases in which he was successful but in the cases in which he failed, Cummings cannot in conscience be allowed to reap the rewards which he could not possibly have obtained had he spoken with reasonable promptness, when the knowledge of the fraud if it existed was brought home to him in the most pointed and unequivocal way."

Much of the above-quoted language could be transferred bodily and without change to the present case.

It may not be amiss, also, to here call attention to the fact, shown by the record, that the decree in the Baker-

Cummings case, was made by the *same trial judge* as the original decree in the case at bar, and was based on the report of the *same auditor* as that in the case at bar, both of whom apparently applied to the case now presented the same erroneous process of reasoning followed by them in the Baker-Cummings case, which fact, we trust, may in the pending case bring about the same action by this court, to wit, a *reversal.*

There cannot be a doubt but that Moyers had the right to dissolve the special partnership between him and Edmonds after Edmonds' adjudged insanity, *if* Moyers had known that it was still existent.

Moyers *supposed*, however, that this special partnership had been dissolved by his purchase of all Edmonds' rights therein. Hence the reason is apparent *why* Moyers took no formal action to secure a decree of dissolution.

Cummings admits that he knew of Edmonds' interest in claims being handled with and by Moyers, and that he had this knowledge during Edmonds' life time, yet Cummings remained silent from *1891*, in which year he became Edmonds' committee, until *1899*, some three years after Edmonds' death, before making known to Moyers any claim in behalf of Edmonds or his estate.

It will be borne in mind that in the meantime, *i. e.*, in *1891*, and after Cummings had been appointed Edmonds' committee, appropriation was made for payment of the Susan Merrill claim, now alleged by Cummings to have been a partnership claim. Had Cummings made claim within a reasonable time, to a share in the Merrill fee, he would have put Moyers on his guard as to the possibility of contention to the effect that the special partnership had not been dissolved; but instead of exercising some diligence as committee of Edmonds, Cummings remained silent, just as he did in the Baker case, and suffered *eight* years to elapse before making any demand for a share of the Merrill fee.

Can it be doubted for a moment that Moyers would not have proceeded to dissolve the special partnership with Edmonds during all that time, if he had had any reason to suppose there was any ground for attributing continued existence to it?

If Moyers had proceeded through a court of equity to dissolve the partnership with Edmonds, it is plain that under the law of partnership, there would have been an adjustment of the relative rights of the partners up to date of dissolution. Dissolution would have meant that some order would have been made, or some agreement entered into, guarding the interest of the insane partner in the fruits of labor done *up to that time,* but *not thereafter.*

Cummings' inaction—his long continued silence when he should have spoken, left Moyers in fancied security under the supposition that Moyers had acquired all Edmonds' interest in the partnership business. Had the partnership been dissolved and wound up immediately after Cummings had received the papers pertaining to it, the work thereafter done by Moyers would have inured to the sole benefit of Moyers, subject to settlement with Edmonds' committee or administrator for work done prior to such dissolution.

Instead, however, Moyers was permitted to proceed for *seven years* during which the partnership papers were in Cummings' hands, without the performance of an act or the utterance of a word by Cummings to show Moyers that any claim was to be made on account of the special-partnership.

In short, the silence of Cummings which extended over the period beginning with January 31, 1891, and ending in the spring of 1899—over eight years—operated to the great prejudice of Moyers; operated in its real effect, according to the Courts below, to cause Moyers to carry with

him as a partner, the lunatic up to 1896, and the decedent after that date. This, we submit, is surely unconscionable, and should not be permitted by a court of equity.

Regardless of the failure of Moyers to actually secure any valid assignment of Edmonds' rights, because of Edmonds' insanity at date of the attempted purchase, and of the final payment of $500.00, it is plain that thereafter Moyers *considered* and *thought* that he had bought out Edmonds, and thereafter he acted on the supposition that he was working and expending his money for his own use and benefit. In so thinking Moyers may have been in error, but *what was it that kept him in error*, that caused him to work for years under a misapprehension of his rights, but the failure of Cummings, as committee of Edmonds, to make known his claim of right in the premises?

It is submitted that, if injury should be worked to either party, it should be to that party whose inaction and silence when he should have spoken, has caused the other to proceed to his own detriment.

At all times mentioned in this case, Cummings, the complainant, has been a resident of the City of Washington, D. C.

In order to have avoided the doctrine of laches and stale claim, the complainant should have brought suit for an accounting within the period of three years from the collection of the Merrill claim in 1892, that being the period named by the statute of limitations in the District of Columbia.

The filing of such a suit would have at least placed Moyers on his guard and have advised him that he had not secured a valid assignment of Edmonds' interest by the payment of the final sum of $500.00 in 1892, which brought the total sum of payments made by Moyers to Edmonds up to $1,470.00. (P. 214, record, auditor's report.)

As further bearing on the effect which the delay in making claim has had on the interest and right of Moyers, we refer to the practical impossibility of ascertaining with any degree of definition just what claims were actually intended to be covered by the partnership agreement made between Moyers and Edmonds.

It will be borne in mind that the only schedule of cases supposed to fall within the scope of the agreement which has ever been seen by any one who has testified, is that found by complainant, Cummings, among the papers of Edmonds, and which schedule is admittedly in the handwriting of Edmonds.

If Moyers' testimony is to be considered as admissible, then we call attention to the fact that he has testified that when the agreement was actually typewritten and signed, no schedule had been prepared or presented to him by Edmonds.

If Moyers' testimony can not be considered, on the theory that in effect his testimony as to the execution of the agreement relates to a transaction with complainant's decedent, then we nevertheless show by the testimony of other witnesses the same facts, and refer to the testimony of Scott (pp. 54, 55, record), and to that of Wilson (p. 79, record), showing that no schedule was attached to the duplicate of the partnership agreement in Moyers' hands. See, also, Edmonds' letter to Moyers (p. 655, record), dated nearly *two years after* the agreement of special-partnership (agreement, p. 2, record) and in which letter Edmonds then *promised to send* Moyers *"a list"* of his cases.

It is significant, also, that the testimony of Butterfield, one of complainant's counsel, shows that when he first exhibited to Moyers a list of the purported partnership claims in June, 1899, Moyers became very angry and characterized the list as a *"forgery."*

It is plain that the decisions heretofore rendered have been based on the record after eliminating and striking therefrom the testimony of Moyers himself as inadmissible, yet it became necessary for the court below to determine just what claims were covered by the agreement to which it would seem proven that there had been no schedule attached at time of its execution, without the benefit of Edmonds' testimony or that of Moyers, the lips of Edmonds being stilled by death and those of Moyers by the law.

Naturally, after the lapse of all the time mentioned, after his clerical force had been greatly scattered and changed, it was impossible for Moyers to adduce the same proofs as to what was or was not covered by the agreement as would have been possible eight years earlier, and on this further account it is asked that the doctrine of laches be applied to this case, owing to the impossibility of determining just what claims were intended to be embraced in the special-partnership agreement, if, in fact, it was ever completed by the furnishing of a list or schedule by Edmonds to Moyers.

It was stated by this court in the case of Abraham vs. Ordway, 158 U. S., 416, 421; in dismissing a bill on account of laches:

> "One of the grounds upon which courts of equity refuse relief where the plaintiff is guilty of laches *is the injustice of imposing upon the defendant the necessity of making proof of transactions long past*, in order to protect himself in the enjoyment of rights which, during a considerable period, have passed unchallenged by his adversary, with full knowledge of all the circumstances."

The Court of Appeals stated in its decision of May 24, 1904, in the case at bar:

> "It may be admitted that there is some doubt respecting the inclusion of some of these claims in the partnership agreement, but that doubt is not sufficient

> to warrant the rejection of the auditor's findings, that have been examined and approved by the court to which they were reported. Moreover the doubt has been largely occasioned by the failure of Moyers to *obtain* the schedule of the cases, and the careless manner in which he seems to have kept his office records and entries."

It seems to counsel for appellants that all the foregoing bears on the general subject of laches in the presentation of the demand, and it would seem that a proper application to this case of the rules laid down in the various cases decided by this court, below cited, would require the reversal of a decree admittedly made on evidence that left a "doubt" in the mind of the Court of Appeals, and in view of the long delay on part of complainant in making known any claim or right.

It would surely seem that, when the evidence leaves on the mind of the Court of Appeals *"doubt"* as to what was intended to be covered by the very basis of the suit, the agreement of special-partnership, then the case falls within the rule laid down by this court in case of McKnight vs. Taylor, 1 How., 161, and wherein this court said (the emphasis being ours):

> "In matters of account, where they are not barred by the act of limitations, courts of equity refuse to interfere after a considerable lapse of time, from consideration of public policy, *and from the difficulty of doing entire justice* when the original transactions have become obscure by time, and the evidence may be lost."

How is it possible in this case, for the court to be at all certain that it is *"doing entire justice,"* when the court from which appeal is taken has said there is doubt in the regard mentioned? If the court can not now act under a conviction that it is doing "entire justice" by passing upon all the facts of the case, then the rule above cited should be applied and

the suit be dismissed on account of the evident laches of which complainant has been guilty.

In further support of the principles above suggested, as applicable to this case, we refer to the following decisions, most of which were rendered by this court.

In Piatt vs. Vattier, 9 Peters, 405, 416, this court said:

> "The established doctrine—or, as Lord Redesdale phrased it, in Hovenden vs. Annesley (2 Sch. & Lef., 637-638), 'the law of courts of equity'—from its being a rule adopted by those courts, independently of any positive legislative limitations, is that it will not entertain stale demands. Lord Camden, in Smith vs. Clay (3 Brown's Ch. Rep., 640, note), stated it in a very pointed manner. 'A court of equity,' he said, 'which is never active in relief against conscience or public convenience, has always refused its aid to stale demands, where the party has slept upon his rights, or acquiesced for a great length of time. Nothing can call forth this court into activity but conscience, good faith and reasonable diligence. Where these are wanting, the court is passive and does nothing; laches and neglect are always discountenanced, and therefore from the beginning of this jurisdiction there was always a limitation of suit in this court."

See, also, the following cases cited by this court:

> Cholmondeley vs. Clinton, 2 Jac. & Walk., 1.
> Kane vs. Bloodgood, 7 Johns. Ch. Rep., 93.
> Decouche vs. Saratiere, 3 Johns. Ch. Rep., 190.
> Prevost vs. Gratz, 6 Wheat., 481.
> Hughes vs. Edwards, 9 Wheat., 489.
> Willison vs. Matthews, 3 Pet., 44.
> Miller vs. McIntire, 6 Pet., 61, 66.

The case of Piatt vs. Vattier, *supra*, was referred to with approval in the case of McKnight vs. Taylor, 1 How., 161, which is very frequently cited. In the latter case the court stated that it would not deny relief merely by analogy to

the statute of limitations, which had not run at date of beginning suit, and continued in the following language:

> "For it is not merely on the presumption of payment, or in analogy to the statute of limitations, that a court of chancery refuses to lend its aid to stale demands. There must be conscience, good faith and reasonable diligence to call into action the powers of the court."

The same general principle was directly involved in case of Bowman vs. Wathen, 1 How., 189, and this court referred to the above cited decisions, stating:

> "The complainants are invoking the aid of a court of equity; if they have perfect rights, proper for the cognizance of a different forum, they can have no standing here; if, on the contrary, they require the interposition of this court, they must stand or fall upon the settled principles which govern its action."

It may be suggested that the position of Moyers, as surviving partner, notwithstanding his attempted purchase of Edmonds' interest, was at least similar to that of a trustee, and that lapse of time can have no effect. As to that theory, however, we refer to the case of Badger vs. Badger, 2 Wall., 87, 96.

In that case this principle of a trust being enforceable notwithstanding lapse of time was mentioned, but it was further stated by this court:

> "Now, these principles are, no doubt, correct, but the qualifications with which they are stated should be carefully noted:
>
> "1st. The trust must be 'clearly established.'
>
> "2nd. The facts must have been fraudulently and successfully concealed by the trustee from the knowledge of the *cestui que trust.*"

See, also, to same effect, Norris vs. Haggin, 136 U. S., 386.

As applied to the facts of the case at bar, it will be seen that no *concealment* by *Moyers* has ever been either alleged or proven; he had nothing to conceal for the very good reason that after his final payment to Edmonds in 1892, he always considered that he was the sole party in interest in the business which is alleged to have been covered by the special-partnership. If there was ever any concealment practiced anywhere in this case, by anyone, then it was practiced by the *complainant,* by his eight years of silence regarding any claim of interest either as committee of Edmonds or as his creditor in some small, indefinite amount, or as his administrator. It is therefore apparent, that if the principles governing assertion of trusts after lapse of time are considered at all in this case, their application must redound to the benefit of the appellants rather than to the appellee and original complainant.

In Badger vs. Badger, 2 Wall., 87, the Court commented upon the fact that the complainants had full knowledge of the facts, some personally and others constructively, the facts appearing on public records. In the case at bar, the complainant admits that he had possession of Edmonds' books and papers as his committee, as early as 1892 (p. 26, Record), and the decedent's brother and next of kin, James B. Edmonds, has testified that he placed the agreement between Moyers and George B. Edmonds in the hands of Cummings *before* the spring of 1893, from which it follows that the delay in making demand upon Moyers for an accounting, or making known to him a demand for accountability, was either deliberate on part of Cummings, committee of Edmonds, or was gross laches on his part, which permitted Moyers to act during a period of eight years after Edmonds' adjudged insanity, under the supposition that he had acquired all Edmonds' interest in the matter.

In the case of Harwood vs. Cincinnati, etc., R. Co., 17 Wall., 78, it was held that delay of even five years in bringing an equity suit was laches under the circumstances of that case.

Ever since 1892 it was just as much known to complainant that Moyers had collected the Merrill case, or was just as easily ascertainable as it was in 1899, yet complainant permitted the period of the statute of limitations to more than expire before suggesting in any way to Moyers that complainant considered himself entitled to a share of the fee in that case. This delay is absolutely unexplained.

In this connection it may be suggested that in the answer of the original defendant, Gilbert Moyers, the application of the doctrine of laches was not pleaded. Be that as it may, the decision of this Court in the case of Sullivan vs. Portland, etc., R. Co., 94 U. S., 806-812, furnishes ample warrant for invoking the doctrine in this case, as this Court said there, evidently in passing upon just such a contention:

> "To let in the defense that the claim is stale, and that the bill can not, therefore, be supported, it is not necessary that a foundation shall be laid by any averment in the answer of the defendants. If the case, as it appears at the hearing, is liable to the objection by reason of the laches of the complainants, the Court will, upon that ground, be passive and refuse relief."

From a long line of decisions of this Court, it would appear that not only will the general doctrine of laches be applied as above suggested, but that the Court will, *of its own motion*, take cognizance of the applicability of the doctrine, even though *not raised by answer or plea.*

In Godden vs. Kimmell, 98 U. S., 201-211, this Court said:

"Courts of equity, acting on their own inherent doctrine of discouraging for the peace of society antiquated demands, refuse to interfere in attempts to establish a stale trust, except where the trust is clearly established, or where the facts have been fraudulently and successfully concealed by the trustee from the knowledge of the *cestui que trust*. Relief in such cases may be sought; but the rule is that the *cestui que trust* should set forth in the bill specifically what were the impediments to an earlier prosecution of the claim, and how he or she came to be so long ignorant of their alleged rights, and the means used by the respondent to keep him or her in ignorance, and how he or she first came to the knowledge of their rights. (Badger vs. Badger, 2 Wall., 87; White vs. Parnther, 1 Knapp, C. C. 227.)

"When a party appeals to the conscience of the Chancellor in support of a claim, says Mr. Justice Field, where there has been laches in prosecuting it, or long acquiescence in the assertion of adverse right, he should set forth in his bill specifically what were the impediments to an earlier prosecution of the claim; and if he does not, the Chancellor may justly refuse to consider his case on his own showing, without inquiring whether there is a demurrer or any formal plea of the Statute of Limitations, contained in the answer. Marsh vs. Whitmore, 21 Wall., 185.)"

While the case of Wollensak vs. Reither, 115 U. S., 96-102, involved validity of reissuance of a patent, it was stated as a general proposition of equity:

"This rule of equity pleading applies in analogous cases; as where, it otherwise appearing on the face of the bill that the claim is stale, or is barred by lapse of time, and it is sought to avoid the effect of such a bar on the ground that the fraud complained of was concealed and has been only recently discovered, it is necessary that 'the particular acts of fraud or con-

cealment should have been set forth by distinct averments, as well as the time when discovered, so that the Court may see whether, by the exercise of ordinary diligence, the discovery might not have been before made.' (Beaubien vs. Beaubien, 23 How., 190; Stearns vs. Page, 7 How., 819; Moore vs. Greene, 19 How., 69; Marsh vs. Whitmore, 21 Wall., 178; Godden vs. Kimmell, 99 U. S., 201; Badger vs. Badger, 2 Wall., 87; Wood vs. Carpenter, 101 U. S., 135; Lansdale vs. Smith, 106 U. S., 391."

While citations, even of decisions by this Court, might be multiplied almost indefinitely, we ask attention to the following cases:

Prevost vs. Gratz, 6 Wheat., 481.
Wagner vs. Baird, 7 How., 234-258.
Upton vs. Tribilock, 91 U. S., 45-56.
Brown vs. Buena Vista Co., 95 U. S., 161.
Richards vs. Mackall, 124 U. S., 183-187.
Hammond vs. Hopkins, 143 U. S., 224.
Abraham vs. Ordway, 158 U. S., 416.

In the case of Willard vs. Wood, 1 D. C. App., 44, it was stated by the Court of Appeals, in dismissing a bill on account of laches:

"The principle, however, is too well established to admit of controversy, that the Statute of Limitations is no less a bar to relief in equity than it is to a recovery at law. It is true, in matters of mere equitable rights or titles, courts of equity apply the statute simply by way of analogy to its application to legal rights or titles of the same nature. But if the equitable right or title be not sued upon within the time which a legal right or title of the same nature ought to be sued upon to prevent the bar of the statute, the Court applies the statute by analogy, and treats the right or claim as effectively barred. This principle is

> too firmly settled to need the citation of authorities for its support. And it follows that the right or claim of the plaintiff, as administrator, asserted against the estate of Wood, is completely barred."

In the case of Sis vs. Boarman, 11 D. C. App., 116; the Court said:

> "It is a well-settled law that, wherever they are applicable, statutes of limitations are of as binding force in equity as common law." (Citing numerous decisions of the Supreme Court of the United States.)

See, also:

Gildersleeve vs. N. Mexico M. Co., 161 U. S., 578.
Galliher vs. Caldwell, 145 U. S., 368.
Speidel vs. Henrici, 120 U. S., 377.

It is well settled that when a party relies on ignorance of facts material to his rights as an excuse for laches or delay in asserting them, he must show *why* he was so long ignorant, and acquit himself of all knowledge of facts which would even put him on inquiry.

Badger vs. Badger, 2 Wall., 87.
Stearns vs. Page, 7 How., 819.
Ware vs. Galveston City Co., 146 U. S., 102.
Moore vs. Greene, 19 How., 69.
Beaubien vs. Beaubien, 23 How., 190.
New Albany vs. Burke, 11 Wall., 107.
Foster vs. Mansfield, etc., R. Co., 146 U. S., 88.
Godden vs. Kimmell, 99 U. S., 201.
Wood vs. Carpenter, 101 U. S., 135.
Hardt vs. Heidweyer, 152 U. S., 547.
Hammond vs. Hopkins, 143 U. S., 224.

As an illustration of the injury done Moyers by Cummings' failure to make known the claim of right in the partnership claims, we refer especially to what is known as the Kidd claim.

This claim was collected in the sum of $13,460.00 (pp. 411, 412, 416, Record). It appears that Edmonds had a fee agreement with the claimant providing for payment of a fee of 50 per cent of collection. Moyers never had any fee agreement (Testimony Ida M. Moyers, pp. 465, 466, 467, Record), and Cummings never advised Moyers that he held any such agreement as committee of Edmonds, but first brought it to light when claiming half the fee (p. 421, Record). The result was that when an effort was made by Moyers to secure a fee agreement from the claimant, the only agreement that he could then secure was one through the local counsel, and the local counsel caused to be inserted therein a provision to the effect that local counsel should receive 15 per cent of collection as his fee, thus leaving Moyers only 35 per cent as his fee. This, notwithstanding a previous agreement that local counsel should receive only 10 per cent of collection as his fee.

In short, by reason of the fact that Moyers had no agreement, he was left at the mercy of claimant and local counsel. Cummings, however, had in his possession at this time the original agreement which Moyers lacked, but Cummings did not advise Moyers of its existence or of his possession of the agreement. Hence, when the claim was actually paid and settled with the claimant, Moyers was compelled to accept only 35 per cent as his fee, and in the decision of this case the Court below has held *Moyers* individually responsible for that additional 5 per cent that went to the local counsel, and charged that percentage against the individual share of Moyers in this fee, this 5 per cent being $673.00 thus charged against Moyers' individual share of the fee.

Does not the action taken in this particular case of the Kidd claim show clearly that Moyers was injured by Cummings' long silence, by Cummings' utter failure to assist

Moyers even by placing Edmonds' papers in Moyers' hands? Does not this long silence on part of Cummings constitute laches under the circumstances of this case?

A further thought comes naturally to the mind in considering this phase of the case.

After Edmonds had been declared insane, while he was wandering about securing small sums from Moyers on account of his impecunious condition, did Cummings ever concern himself with the protection of Edmonds' supposed rights as to which he is now so solicitous? No. Did he ever call upon Moyers, advising him of Edmonds' insanity and of his own appointment as committee, and ask an accounting? No. On the contrary, he permitted his ward to go about the city, living by himself, as best he could.

When did Cummings manifest activity in this matter? Not until his *ward* had departed this life, apparently on some farm in Virginia, and when Cummings had secured to himself from the decedent's next of kin, a complete and absolute *assignment* of all interest of the next of kin in the decedent's estate. Then, when any action he might take would be for his *own sole* benefit, did Cummings have himself appointed to still another fiduciary position, this time as administrator, in order that he might make this present claim.

See, in this regard, as to Cummings holding absolute assignment from his decedent's next of kin, pp. 30, 50, and 51, Record. That there are no other creditors of the decedent save complainant himself, see testimony of Cummings, p. 51, Record. That the indebtedness to himself forming the only actual consideration for the assignment from the next of kin, was of "*a small amount*," or "perhaps several hundred dollars," see testimony of Cummings, p. 50, Record.

In brief, when action would have tended to benefit the

very man for whose estate Cummings was a committee or guardian, he remained silent and acquiescent in the prosecution by Moyers of the partnership claims without giving any notice of a claim of right on behalf of Edmonds, but when, by the death of Edmonds in 1896, the complainant and appellee saw an opportunity to secure from Moyers a portion of the money which had been earned by Moyers' years of effort, *for the sole benefit of Cummings*, then and for the first time Cummings saw a great light as to his duty in the premises; his duty to the man who had been insane from 1891, and who had been dead upwards of three years before any demand was made upon Moyers.

Here mention of two significant dates and facts may not be amiss.

Cummings secured from James B. Edmonds, next of kin to George B. Edmonds, the assignment of all interest of the next of kin in the estate of George B. Edmonds, on *May 8, 1899*. (See copy of assignment, p. 53, Record.)

It was in *June, 1899*, and after Cummings had secured this assignment which made him the sole party in interest, that his counsel, Butterfield, first called upon Moyers and exhibited the list of supposed partnership claims. (See testimony of Butterfield, p. 34, to effect that he first called upon Moyers with reference to this matter in June, 1899.)

It would seem that under all these circumstances the language used by this Court in the case of Marsh vs. Whitmore, 21 Wall., 178-185, is peculiarly applicable, being as follows:

> "The fact that the complainant never felt himself aggrieved until the bonds of the company had risen to their par value, * * * leads to the inference that the present suit was prompted more by a spirit of speculation than any sentiment that injustice had been done to him."

In Galliher vs. Cadwell, 145 U. S., 368-372, this Court said, in holding the claim to be barred by laches:

> "The cases are many in which this defense has been invoked and considered. It is true, that by reason of their differences of fact no one case becomes an exact precedent for another, yet a uniform principle pervades them all. They proceed on the assumption that the party to whom laches is imputed has knowledge of his rights, and an ample opportunity to establish them in the proper forum; that by reason of his delay the adverse party has good reason to believe that the alleged rights are worthless or have been abandoned; and that because of the change in conditions or relations during this period of delay, it would be an injustice to the latter to permit him to now assert them."

In cases of Felix vs. Patrick, 145 U. S., 317, and Abraham vs. Ordway, 158 U. S., 416, one of the reasons for denying the relief sought was the immense difference between the value of the right in question when defendant considered that he had acquired it, and that value at time of commencement of the suit.

If that theory be contemplated in its relation to this case at bar, we find that in 1892, Moyers, after advancing about $900 to Edmonds, attempted, at least, to purchase Edmonds' entire interest for a further cash payment of $500 (Answer, p. 9; Testimony, pp. 56, 66, 71, Record). Save for the small Merrill claim, adjudged to be a partnership claim, and wherein the *entire* attorney fee was only $407.50 (p. 212, Record), not one of the claims prosecuted of those alleged to be partnership claims, had been collected prior to the attempted purchase by Moyers of Edmonds' interest. These claims were desperate claims, the chances being most decidedly against one being made subject of favorable findings of fact by the Court of Claims, to say nothing of actual payment (pp. 99, 100, 109, 110, Record).

Hence, at date of said attempted purchase, the value of Edmonds' interest in the pending claims was a most uncertain mere possibility, possessing practically nothing of actual, tangible commercial value (p. 93, Record).

Even after favorable findings by the Court had been made in some of them, the possible rights of attorneys in fees dependent on collection were very uncertain, because no one could predict *when*, if ever, Congress would *pay* the claims.

We ask the Court to bear these facts in mind in connection with the fact that Cummings never intimated in any way to Moyers, during the period from 1891 till 1899, that Moyers was to be called upon to account for any share or interest in the fees in the cases here involved. It was not until Cummings *knew*, as a then present actual fact, that the prosecution of the claims had been productive of large results, sufficient to defray all partnership expenses, and still to leave a handsome sum, that he evinced a sudden and great desire to make himself, in effect, the partner of Moyers in these collected claims just as he did in the Baker-Cummings case. So long as it was uncertain whether anything would be realized, enough even to pay expenses, he apparently had no wish to suggest any such relationship.

It is plain that the sole party to be benefited by the recovery sought in this case is Cummings, the very person who failed to assert any rights in behalf of his ward while it might have benefited the ward. As further evidencing the speculative character of the suit, we ask attention to the testimony of the complainant, on pages 50-51, Record, where it is admitted by complainant that Edmonds, the decedent, owed complainant only *"a small amount,"* or *"perhaps* several hundred dollars."

It would seem plain that, if the decedent was permitted to become indebted to Cummings in the "small amount"

mentioned, that indebtedness constituted the only real consideration for the assignment secured by complainant from the next of kin, and by virtue of an assignment so secured, upon that indefinite and doubtful consideration, the complainant now seeks to collect a total of about sixteen thousand dollars by this suit. It would really seem that the use of the word *"speculation"* as applied to this suit is as euphemistic and mild a word as the facts will permit.

In fact, the "disproportion" between the nominal consideration (if any) passing from complainant for the assignment of all interest in the decedent's estate, and the amount now *sought* by this suit, to quote the language of this Court in the case of Felix vs. Patrick, 145 U. S., 317-334:

> *"is so great that the conscience is startled."*

In the exhaustive decision of this Court in the case of Hammond vs. Hopkins, 143 U. S., 224, it was said:

> "No rule of law is better settled than that a court of equity will not aid a party whose application is destitute of conscience, good faith, and reasonable diligence. * * *"

Under the facts of this case, as appearing from the Record, does not the case presented fall within the operation of the rule so announced?

It is therefore submitted that the third assignment of error should be held well grounded.

CONCLUSION.

Just to illustrate the utterly absurd results which are found in this *"equitable"* adjustment of the rights of parties, and without asking the Court to follow the lower Court into the testimony in order to prove a disregard of

both facts and reason, we call attention to the claim of estate of Isaiah H. Beans (pp. 413, 414, 416, 417, Record).

In this particular claim, in order to secure necessary testimony, Moyers agreed to allow a local attorney one-half the total fee, which amounted to $640. Hence, the local counsel received $320 as his share of the fee. At first the auditor charged Moyers with all the payment to local counsel, thus leaving Moyers with nothing from which to pay his share of firm expenses in the case.

This action was reversed, and the auditor finally held that the Moyers-Edmonds partnership should pay local counsel $100. That ruling compelled Moyers to individually pay the other $220, plus his half-share in the $100, and also plus his half of expenses incurred, including half the receivers' commissions of 10%. To make a long story short, after years of work on this claim, and after putting about $200 into the hands of complainant, *Moyers actually lost the sum of $1.16.* For years of labor and advancing of expenses, *Moyers' net fee was a minus quantity. And this a suit in equity!*

In the endeavor to make the consideration of this case less onerous to this Court, appellants have discarded many assignments of error, determination of which would require consideration of details to be drawn from the Record. Apellants do not insist that this Court take the time necessary to examine the Record for purpose of reviewing the facts, and base their prayer for a reversal simply on three plain legal propositions.

If this Court shall agree with appellants as to the applicability of the doctrine of laches to this demand, then that will dispose of the entire case.

If this Court believes that, notwithstanding the unexplained silence of complainant in making known his claim of right in the premises, he should still be considered en-

titled to take something by this suit, in face of the apparent fact that complainant is shown to be individually the *sole* party in interest under assignment from the decedent's next of kin, then it is prayed that such instructions may be given as will result in the application to this case of well-established legal and equitable principles to which attention has been called, and that specific instructions be given to the Court below that the complainant be required to show the reasonable value of services rendered by the Moyers-Edmonds special partnership prior to its dissolution, and that the complainant take one-half of such reasonable value, after deducting partnership expenses and advances made by Moyers to Edmonds; and that instructions be also given to allow *no interest*, to either party.

Respectfully submitted,

A. S. WORTHINGTON,
CHAS. F. CONSAUL,
IDA M. MOYERS,
Solicitors for Appellants.

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Supreme Court, U. S.
FILED
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JAMES H. McKENNEY,
Clerk.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

No. 38.

CHARLES F. CONSAUL AND IDA M. MOYERS, ADMINISTRATORS OF THE ESTATE OF GILBERT MOYERS, DECEASED, APPELLANTS,

vs.

HORACE S. CUMMINGS, ADMINISTRATOR OF THE ESTATE OF GEORGE R. EDMONDS, DECEASED, APPELLEE.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

BRIEF FOR APPELLEE.

CHARLES COWLES TUCKER,
J. MILLER KENYON,
Solicitors for Appellee.

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APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

BRIEF FOR APPELLEE.

Statement of Facts.

The statement of facts in the appellants' brief is very general, owing, probably, to the nature of the assignments of error. It contains, however, several absolutely incorrect recitals, to which attention must be invited.

(1)

Thus, on pages 6 and 7 it is stated that although the appellee in this case appears as administrator, he is the real party in interest; that he has admitted receiving an assignment from the next of kin of his intestate in consideration of an indebtedness of the decedent to him, and that it thus appears that the claim presented is a purely speculative one, prosecuted by one having no intention of serving any one save himself. These statements are untrue. Reference to the record (page 53) will show that James B. Edmonds, sole next of kin of the intestate, made an assignment to the complainant May 8, 1899. The bill alleges the complainant's appointment as administrator August 22, 1899, and his qualification as such (R., 2), which statement is admitted by the defendant's answer (R., 8). In an effort to show that this suit was a speculative one, the complainant was asked on cross-examination (R., 50): "If this suit shall be successful the entire proceeds will come to you?" He answered: "As administrator." Again he was asked (R., 50): "And under this assignment you will have the right to retain the whole amount, will you not?" He answered: "No; I suppose not. The assignment was given for the purpose of enabling me to make a clean settlement that would be satisfactory to Mr. Moyers." Again he said, in reply to the question whether or not the assignment was not a complete one of all his interest: "It was given as a complete assignment for the purpose of being able to make a complete settlement" (R., 51). The complainant's testimony and that of Mr. Butterfield, his counsel (R., 33), show that the assignment was given to enable the complainant, as the representative of the next of kin of the decedent, to make a settlement without suit with the decedent, Gilbert Moyers, and that, failing such purpose, and as such a settlement could not be reached, the appellee was duly appointed administrator. At-

tention is invited to the fact that Mr. James B. Edmonds, the sole next of kin of the decedent, and a former Commissioner of the District of Columbia, testified in the case (R., 42-46) on the same day that the appellee testified in relation to this assignment, and yet Mr. Edmonds was not interrogated in respect of it, nor was it even then hinted that he had surrendered any of his rights by reason of it.

This point in any aspect is one not open to the appellants, as it in no wise concerns them, but is a matter that rests exclusively between the appellee and his intestate's next of kin, subject to the control of the probate and chancery courts as to the settlement of the appellee's accounts. See especially Moyers' testimony (R., 158) relative to the assignment. The appellants' accusation that the appellee procured the assignment for sinister purposes is as offensively gratuitous as it is false.

(2)

On page 8 of the appellants' brief attention is called to the fact that Gilbert Moyers advanced the intestate, Edmonds, various sums of money by way of loans in 1891 and 1892; mention was made of these circumstances, it is stated, as going to show that Moyers had no knowledge of the lunacy proceedings, and that Edmonds was under no restraint. While there is nothing in the record showing that Moyers had actual knowledge of the lunacy proceedings in the sense that he was a party to them, the decree adjudging Edmonds insane was of record, and, necessarily, Moyers had constructive, if not actual, notice of them. But, aside from this, the testimony affirmatively shows that Edmonds was insane at this time. One Hill, a witness for the appellants' intestate, himself stated that at the time in question he thought Edmonds to be a crazy man, such opinion being based upon Edmonds' manner, his general appearance, the way he talked, his mode of seating himself, bowed over, with his head in his hands, and his walk (R., 76). This

witness was an occupant of Moyers' office at the time these payments were made and his means of observation were the same as Moyers'. The witness also stated that one Scott, also a witness for the appellants' intestate and an employee of Gilbert Moyers, when reference was made by the witness to Edmonds, exclaimed, "What, that crazy fool?" (R., 77). So that, necessarily, Moyers must have had actual knowledge of Edmonds' mental condition, whether he had such knowledge of the adjudication of his insanity or not.

(3)

It is further stated, on page 8 of appellants' brief, as though it were a conceded fact in the case that Moyers attempted to purchase from Edmonds all of Edmonds' interest in the claims covered by the partnership, and pursuant to said attempt actually paid Edmonds the sum of $500 in one payment. An examination of the record will show most conclusively that although the sole defense set up by the answer to the bill of complaint was that Moyers made such purchase he failed utterly to prove it. The averment in the answer that such a purchase was made was, as the testimony shows, an afterthought of the defendant Moyers. The testimony is almost conclusive that it never entered his head to make such a claim until after this suit was brought. This is shown by the following facts: The bill was filed September 16, 1899 (R., 1).

As early as May, 1899, the appellee had taken up with Moyers the matter of an accounting by the latter. On May 26, 1899, Moyers wrote to the appellee as follows:

> "As to the cases of Mr. Edmonds which I have in charge, as I advised you recently, I have advanced him considerable money and besides have incurred heavy expenses in the prosecution of claims rejected as well as those allowed. I have not had time to make up the account yet, *but will do so* just as soon as I have opportunity" (R., 194).

Here it will be observed was a definite promise on Moyers' part to make an account, with no suggestion that he was the owner by purchase of Edmonds' interest in the claims.

During July and August, 1899, the appellee was negotiating with Moyers, through his attorney, Butterfield, to settle without suit. Moyers did not even intimate at that time that he had bought Edmonds' interest. Butterfield called on Moyers a number of times and obtained the latter's promise to make an investigation to ascertain the state of his account with Edmonds. Mr. Butterfield testified (R., 35) that Moyers one day showed him (Butterfield) a typewritten folio of claims that he had examined under the Edmonds contract, and added, "I think I am quite sure he mentioned sixteen claims which he had found in which he and Edmonds were attorneys. In one of these interviews I told Mr. Moyers there were about $60,000 of claims under the Edmonds and Moyers contract, and that the fees due Edmonds' estate in these claims would be about $13,000." Witness further testified that Moyers then stated that he would have to go over his books; that Mr. Edmonds had borrowed money of him; that he had loaned him money and wanted to see how much he owed him, but he had been sick and unable to complete his examination. At this time no intimation was given by Moyers that he had ever bought his former partner's interest in the claims. The documentary evidence in the case fully corroborates Mr. Butterfield's testimony. Thus, on July 21, 1899, which was two months before the suit was brought, Moyers wrote to Butterfield: "Owing to prostration from heat, I have not been able to complete the work in these Edmonds cases. I have got it well in hand, however, and will have the statement ready by Thursday next, possibly Wednesday" (R., 7). Again, on August 3, 1899, a month before the suit was brought, Moyers wrote to Butterfield: "I regret to inform you that owing to my health not being the best for the last week or so, I have not yet completed that statement in the Edmonds matter,

but have made considerable progress and will be through with it this week, I think" (R., 7). Again, with respect to the alleged last payment of $500 on account of the purchase price alleged by Moyers to have been paid Edmonds, Moyers testified that such payment was made in his office in the Washington Loan and Trust Building in August, 1892. The testimony for the appellee conclusively established the fact that Moyers' tenancy in that building did not begin until January 1, 1893. Moyers testified that he made an entry in his diary of such payment of $500. He did not produce the diary until after the decree of the court below of June 13, 1900, was passed, establishing the partnership and directing an accounting. When the case then went to the auditor he produced it, and it appeared that the entry of the $500 was in lead pencil, and was such an entry as might have been made at any time. Again, his own witness, Ezra Nat Hill, testified as follows (R., 77): "Col. Moyers said in his office that he wanted to employ me in this case and would pay me a good fee. I agreed to accept employment, and then Moyers told me he wanted some one to swear that Edmonds said he had sold his business to Moyers—asked me if I would find such a person. I suggested Scott and Tom Dent, his colored janitor, as the most probable persons to have heard such a thing." The witness was asked: "Did you thereafter see Col. Moyers and tell him Scott would swear that Edmonds told him (Scott) that he (Edmonds) had sold all his business to Col. Moyers?" The witness answered, "Yes." Witness was then asked whether at such conversation with Col. Moyers the latter told the witness that he must try to get one not in his employ to swear he heard this, and that he, Col. Moyers, would pay $20 for it. Witness replied, "Col. Moyers told me that he wanted some one outside of his office to swear that he had heard Edmonds say that he, Edmonds, had sold his business to Moyers, and that he would pay such witness. Moyers asked me if I could get such witness, and I said I could, but I had no intention of doing so,

as I did not engage myself to do that kind of work for Moyers" (R., 78). If it is true that Moyers paid Edmonds any large sum of money in 1891 or 1892, it was unquestionably the amount due Edmonds as his part of the fee in the Susan Merrill case, which was appropriated for by the act of 1891.

Concerning the alleged purchase, the trial court (Mr. Justice Hagner) said:

> "That a man of the defendant's intelligence would have neglected to obtain a formal release from Edmonds witnessed by persons of more intelligence and position than those by whom the defendant undertakes to settle this all-important transaction, and one of whom speaks of Edmonds as a crazy man, is inconceivable, and yet there is no effort made by him in that direction.
>
> "From the time of Edmonds' death there had been constant effort on the part of Cummings, as administrator, to secure a settlement of those unsettled accounts, and yet the defendant never made any pretension that he had bought out Edmonds until the filing of his answer in September, 1899. Can any explanation be given of his failure to present that defense which, if true, would have settled the case in his favor without another word?
>
> "He admits in his testimony that he never breathed a word of this defense to Cummings or to his attorney, Butterfield. He does not produce his diary in which, as he swore, there appears an entry made by himself of the payment of the $500, the only mention that he made of any writing on the subject from first to last."

On the first appeal to the Court of Appeals in this case the court had this to say with reference to the purchase alleged by Moyers:

> "The original answer of the surviving partner contained a substantial confession of the main allegation in the bill, coupled with an avoidance of their effect through the completed purchase alleged to have been

> of Edmonds' interest in the partnership. *This alleged purchase and settlement wholly failed on the proof,* and the court expressly so declared." 17 App. D. C., p. 279.

The Court of Appeals on another appeal by Moyers thus disposed of the same defense (R., 392-393):

> "Without passing upon the question whether a binding contract could have been made with Edmonds for the assignment of his interest in the fees expected to be realized under the contract, on account of his pre-established lunacy, it is sufficient to say that we find no satisfactory proof that such an assignment or relinquishment was ever made. The relations established between the parties by the agreement imposed upon Moyers the burden of making clear and satisfactory proof of the settlement, and the release by Edmonds of his interest in the fees to accrue thereunder.
>
> "The entries in Moyers' books show certain advances and 'loans' to Edmonds, who was impecunious, of sums ranging from $10 to $100, between January 17 and July 23, 1892. These entries speak for themselves. The evidence of the payment of the final sum of $500 is meager, and in so far as it relates to the settlement and release, of which this payment is claimed to be the concluding act, falls short of the requisite standard of certainty."

And yet with these decisions of the lower courts on this question of fact against them we find the appellants asserting in their brief, as though it is a conceded fact, that Moyers purchased the interest of his copartner.

Concurring decisions in two lower courts on questions of fact will be followed unless clearly shown to be erroneous. *Brainard vs. Buck*, 184 U. S., 99. The Supreme Court of the United States will not disturb findings of fact concurred in by the appellate and trial courts. *Leach vs. Burr*, 188 U. S., 510.

In *Shappirio vs. Goldberg*, 192 U. S., 232, from the District of Columbia, the court says (240):

> "In this case the issues are mainly those of fact, and in the absence of clear showing of error the findings of the two lower courts will be accepted as correct. *Stuart vs. Hayden*, 169 U. S., 1; *Dravo vs. Fabel*, 132 U. S., 487. An examination of the record in the light of these findings does not enable us to reach the conclusion that error has been committed to the prejudice of the appellants."

It is stated on page 9 of the appellants' brief that in the summer of 1899 the complainant, acting by counsel, demanded an accounting from Moyers, which was *refused*, and thereafter suit was brought. As hereinbefore shown, Moyers did not refuse an accounting, but consented to make one. It was because of his failure to make one that the suit was brought.

Preliminary.

In the reply brief on the third appeal in the court below the appellants said (pp. 11-12):

> "IT IS INSISTED BY APPELLEE THAT GILBERT MOYERS, AS SURVIVING PARTNER, WAS TRUSTEE FOR THE ESTATE OF HIS DECEASED PARTNER. WE HAVE NO CONTROVERSY WITH APPELLEE AS TO THAT BEING SOUND LAW, * * *."

Again, on page 17 of the same brief, they said:

> "APPELLANTS ADMIT THAT COMPLAINANT BELOW IS ENTITLED TO A CONSIDERABLE SUM OF MONEY, AND ARE WILLING TO PAY HIM THAT MONEY, BUT NO MORE."

With the law and the fact expressly admitted as above stated, and even if the sum left in dispute be not below the jurisdictional limit, as to which we are left in doubt, of

what use it is to wander aimlessly and guidelessly through this tangled record of 730 printed pages? We are not pointed to a single specific error, but are presented with certain general, abstract, argumentative statements called assignments of error, which wholly fail to conform to the requirements of Rule 21 of this court.

We have pending in this case motions to dismiss or affirm for failure to file any assignments of error in the court below on this appeal, these motions being noted for November 6, 1911, the earliest date following the notice required by the rule. If any doubt could have been indulged as to the soundness of our motions, it is pointedly dispelled by the appellants' brief, which has since been filed.

That brief, we believe, warrants us in asking an affirmance on the further grounds that this appeal has manifestly been taken for delay only, and that the questions on which the decision of the cause depends are so frivolous as not to need further argument.

At the least, we submit, the cause is one eminently fit only for the summary docket (Rule 6, section 5, as recently amended), if it be not otherwise disposed of by the court.

It has already been said in substance that appellants' brief contains no specification of errors *such as is required by Rule* 21 *of this court;* indeed, no attention whatever has apparently been paid to that rule, but they have followed their own course in the matter, and now insist that this court shall accept their method of procedure in preference to its own rules. As far back as February term, 1806, the then Rule XIX of the court required assignments of errors, and the first clause of that rule provided:

> "This rule shall apply to all judgments rendered by the court for the District of Columbia at any time prior to a session of this court."

In their brief in opposition to our motion to dismiss or affirm for want of an assignment of errors appellants insinuatingly say (p. 4):

"It is a rather significant fact that counsel for appellee have been unable to cite a single case in *this* court where the appeal has been dismissed on the ground relied upon here."

In *Benites vs. Hampton*, 123 U. S., 519, decided December 5, 1887, this court, speaking by Mr. Chief Justice Waite, unanimously said (519-521):

"Section 997 of the Revised Statutes is in these words:

> " 'There shall be annexed to and returned with any writ of error for the removal of a cause, at the day and place therein mentioned, an authenticated transcript of the record, an assignment of errors, and a prayer for reversal, with a citation to the adverse party.'

"Rule 8, §1, of this court is as follows:

> " 'The clerk of the court to which any writ of error may be directed shall make return of the same, by transmitting a true copy of the record, and of the assignment of errors, under his hand and the seal of the court.'

"Rule 21 requires printed briefs to be filed, and §2 of that rule provides that the brief shall contain, in the order here stated:

> " '(1) A concise abstract, or statement of the case, presenting succinctly the questions involved and the manner in which they are raised.'
>
> " '(2) A specification of the errors relied upon, which, in cases brought up by writ of error, shall set out separately and particularly each error asserted and intended to be urged; and in cases brought up by appeal the specification shall state, as particularly as may be, in what the decree is alleged to be erroneous. When the error alleged is to the admission or to the rejection of evidence, the specifica-

tion shall quote the full substance of the evidence admitted or rejected. When the error alleged is to the charge of the court, the specification shall set out the part referred to *totidem verbis*, whether it be instructions given or instructions refused. When the error alleged is to a ruling upon the report of a master, the specification shall state the exception to the report and the action of the court upon it.'

"'(3) A brief of the argument, exhibiting a clear statement of the points of law or fact to be discussed, with a reference to the pages of the record and the authorities relied upon in support of each point. When a statute of a State is cited, so much thereof as may be deemed necessary to the decision of the case shall be printed at length.'

"Sections 4 and 5 of the same rule are as follows:

"'4. When there is no assignment of errors, as required by §997 of the Revised Statutes, counsel will not be heard, except at the request of the court; and errors not specified according to this rule will be disregarded; but the court, at its option, may notice a plain error not assigned or specified.'

"'5. When, according to this rule, a plaintiff in error or an appellant is in default, the case may be dismissed on motion; and when a defendant in error or an appellee is in default, he will not be heard, except on consent of his adversary, and by request of the court.'

"This statute and these rules have been disregarded altogether in this case. No assignment of errors is found in the transcript annexed to and returned with the writ. The assignment of errors on the appeal from the District Court to the Supreme Court of the Territory cannot be accepted in this court as the equivalent of the assignment required by the statute.

"The brief contains no specification of errors such

as is required by the rule, and there is no statement of the case presenting the questions involved, or the manner in which they are raised. In the argument there is no reference to the pages of the record relied on to support the points which are made. Not only is there a failure to quote the full substance of the evidence admitted or rejected, of which complaint is made, but even the names of the several witnesses upon whose testimony the objections rest are not mentioned. In short, to get at the matter which is complained of we must hunt through what is called a 'proposed statement on appeal and motion for a new trial,' filling thirty pages of the record, with nothing in the brief to aid us in the search. This we are unwilling to do. In the present crowded state of our docket, we must insist on a reasonable compliance with the rules which have been adopted to facilitate the investigation of cases and help us in our work.

"We therefore dismiss the case, under §5 of Rule 21, for want of an assignment of errors and of a brief such as is required by the rules."

In *Rowe vs. Phelps*, 152 U. S., 87, this court unanimously said (88):

> "There is no assignment of errors sent up with the record in this case, as required by Rev. Stat. §997, and no 'specification of the errors relied upon,' as required by Rule 21 of this court. This rule requires that the specification 'shall set out separately and particularly each error assigned and intended to be urged,' and there is no such 'plain error not assigned or specified,' as calls upon the court to exercise its option to review the questions involved. It would seem that unless the statute and rule are to be entirely disregarded, this writ of error must be *dismissed*."

The court will not consider alleged errors in the admission or refusal of evidence unless the testimony that is claimed to have been erroneously admitted or excluded is set out substantially in the assignment of errors and in the brief (*Hol-*

dane vs. United States, 69 Fed., 819-821). The rule of court requires the appellants to refer in their brief to the pages of the record where the testimony admitted or rejected, and the rulings of the court on it, may be found (*Sipes vs. Seymour,* 76 Fed., 116-118).

With each specification of error in the brief there ought to be a reference to the corresponding assignment of error as well as to the place in the record where the alleged error is shown (*Vider vs. O'Brien,* 62 Fed., 326-327). Rule 24, C. C. A., is the same Rule 21 of this court; by its strict observance attention is directed to the vital questions at issue to the exclusion of immaterial questions. The court should enforce the rule requiring errors to be distinctly specified which are intended to be urged, and errors not specified will be disregarded (*City of Lincoln vs. Sun Vapor Co.,* 59 Fed., 756-759).

Where plaintiff in error has filed no assignments of error or brief as required by Rule 21, the judgment will be affirmed (*Ryan vs. Koch,* 17 Wall., 19). Errors not assigned in the manner required by Rule 21 will be treated as if not made (*Deitsch vs. Wiggins,* 15 Wall., 539-546. See *Scholey vs. Rew,* 23 Wall., 331-345; *Lucas vs. Brooks,* 18 Wall., 436-456).

There is a full collection of the cases on assignments of errors in *Simpkins' Federal Suit in Equity,* 695-700 (1911).

In *Camden vs. Stuart,* 144 U. S., 104, the court says (117):

> "We have been much embarrassed in the consideration of this case by the want of the assignment of errors required by Rev. Stat. sec. 997, and the twenty-first rule of this court, and should have felt ourselves justified upon that ground in refusing to take cognizance of the case. We have, however, examined the evidence so far as it bears upon the question of these defendants' liability upon their stock subscriptions, and have found it confusing and unsatisfactory. Indeed, the vital question whether the

capital stock of this corporation was ever paid in money or money's worth is so covered up and obscured by a multiplication of figures and an entanglement of details that it is almost impossible to arrive at the exact truth. * * * If any further payments were made, defendants should make it appear clearly and satisfactorily. They failed to satisfy the court below. They have failed to convince us. In lieu of the evidence which the nature of the case required, they have presented us a complicated mass of testimony, and have asked us to evolve from it sufficient to support their theory that, in some manner, of which apparently they have no clear comprehension, these subscriptions were paid.

"In cases of this kind, referred to a master to state an account, depending, as they do, upon an examination of books, upon the oral testimony of witnesses, and, perhaps, as in this case, upon the opinions of an expert, 'his conclusions have every reasonable presumption in their favor, and are not to be set aside or modified unless there clearly appears to have been error or mistake on his part.' This was the rule laid down by this court in *Tilghman vs. Procter,* 125 U. S., 136, and approved in *Callaghan vs. Myers,* 128 U. S., 617, 666, and in *Kimberly vs. Arms,* 102 Mass., 480; *McDonough vs. O'Neil,* 113 Mass., 92. We see no reason for departing from it, and think this is a proper case for its application.

"Upon the whole, we agree with the circuit court upon the points involved in these appeals, and the decree of that court is therefore *affirmed.*"

Furthermore, the appellants' exceptions to the auditor's reports are utterly futile (R., 214, 469, 584, 667, 720), for they consist of nothing but abstract, general statements, lacking every essential element of good exceptions to the reports of auditors or masters.

The rules relative to such exceptions and the effect of the conclusions and findings of auditors and masters are sufficiently covered in the following cases:

In *Sheffield & Birmingham Coal, Iron & Ry. Co. vs.*

Gordon, 151 U. S., 285, the court quotes (289-291) the defendants' exceptions and says:

> "There are two difficulties in the way of considering the case upon these exceptions.
>
> "(1) The exceptions themselves are too broad, and amount simply to a general denial of the facts and conclusions of the master. The first three are to the finding of the master that the defenses are not sustained; that the petitioners are entitled to the contract price, and that the sum awarded is the amount due. In other words, they are general denials of the merits of the claim. The fourth is a denial of petitioners' lien because the evidence sustained the defenses, because the work was not up to the requirements of the contract, and because the report was against the weight of testimony. This exception is scarcely more definite than the other. * * *
>
> "Proper practice in equity requires that exceptions to the report of a master should point out specifically the errors upon which the party relies, not only that the opposite party may be apprised of what he has to meet, but that the master may know in what particular his report is objectionable, and may have an opportunity of correcting his errors or reconsidering his opinions. The court, too, ought not to be obliged to rehear the whole case upon the evidence, as the main object of a reference to a master is to lighten its labors in this particular. In the case of *Dexter vs. Arnold,* 2 Sumner, 108, 125, an exception to a report of a master that he had stated and certified that there was due on a certain mortgage a certain sum when he ought to have reported that there was nothing due, was held by Mr. Justice Story to be quite untenable. 'It is too loose and general in its terms,' said he, 'and points to no particulars. It comes to nothing, unless specific errors are shown in the report; and those errors, if they exist, should have been brought directly to the view of the court in the form of the exception itself. At present it amounts only to a general assignment of errors, and the argument on this exception has shown none.'
>
> "The same rule was laid down in *Story vs. Living-*

ston, 13 Pet., 359, 366, wherein the exceptions to the report of a master were held to be too general, indicating nothing but dissatisfaction with the entire report; and furnishing no specific grounds, as they should have done, wherein the defendant had suffered any wrong, or as to which of his rights had been disregarded. The court observed that 'exceptions to a report of a master must state, article by article, those parts of the report which are intended to be excepted to.' The court cited with approval the case of *Wilkes vs. Rogers*, 6 Johns., 566, wherein it was said that exceptions to reports of masters in chancery are in the nature of a special demurrer, and the party objecting must point out the error; otherwise the part not excepted to will be taken as admitted.

"So in *Greene vs. Bishop*, 1 Cliff., 186, 191, Mr. Justice Clifford held that 'general allegations of error, without pointing to any particulars, are clearly insufficient, for the reason that, if allowable, the losing party might always compel the court to hear the case anew, and should that practice prevail, references such as made in this case would become both useless and burdensome, as they would only operate to promote delay and increase the expenses of litigation, without relieving the court from any of the labor of the trial or ever accomplishing anything of value to either party.' See also *Stanton vs. Alabama, &c., Railroad*, 2 Woods, 506, 518.

"That this is not a novel practice in Alabama is evident from a number of decisions of the Supreme Court of that State affirming the general doctrine in the most specific terms. *Alexander vs. Alexander*, 8 Alabama, 797; *Royall's Administrator vs. McKenzie*, 25 Alabama, 363; *O'Reilly vs. Brady*, 28 Alabama, 530; *Mahone vs. Williams*, 39 Alabama, 202. See also *White vs. Hampton*, 10 Iowa, 238; *Reed vs. Jones*, 15 Wisconsin, 40; *Smalley vs. Corliss*, 37 Vermont, 486, 492. Cases are referred to a master, not on account of his presumed superior wisdom, but to economize the time and labor of the court, and as exceptions are usually filed to his report, if they are so general as to require a rehearing of the entire case, there is really nothing saved by a reference.

"It is true if the report of the master is clearly

> erroneous in any particular, it is within the discretion of the court to correct the error, but we see no occasion for exercising such discretion in this case."

Proceeding to the discussion of the second objection, the court says (293):

> "(2) There is another objection, however, to our examination of the facts in this case. The order referring the case to the special master, though minute in its details, did not require him to send up the testimony; neither does he purport to do this in his report; and while a number of depositions taken before him are filed, there is nothing to indicate that these were all the testimony in the case. He finds in this connection that the defences set up by the defendants are not sustained by the evidence, and that the petitioners, Gordon, Strobel and Laureau are entitled to be paid the contract price for the material.
>
> "In the absence of any certificate that the entire evidence taken by the master was sent up with his report, it is impossible to impeach his conclusion in this particular. *Scotten vs. Sutter*, 37 Michigan, 526; *Nay vs. Byers*, 13 Indiana, 412; *Fellenzer vs. Van Valzah*, 95 Indiana, 128. There is no presumption that all the testimony was sent up.
>
> * * * * * * *
>
> "Upon the whole, we think the decree of the court below was correct, and it is, therefore, *affirmed*."

It will be noted that in no instance, in the present case, were any exceptions taken before, or called to the attention of the auditor. Under the various orders of reference the auditor reported his conclusions and findings both of law and fact. In these circumstances it may well be held that it is impossible to impeach his conclusions.

In *Crawford vs. Neal*, 144 U. S., 585, the court says (596, 601):

> "The cause was referred to a master to take testimony therein, 'and to report to this court his findings of fact and his conclusions of law thereon.' This he

did, and the court, after a review of the evidence, concurred in his findings and conclusions. Clearly, then, they are to be taken as presumptively correct, and unless some obvious error has intervened in the application of the law, or some serious or important mistake has been made in the consideration of the evidence, the decree should be permitted to stand. *Tilghman vs. Proctor*, 125 U. S., 136; *Kimberly vs. Arms*, 129 U. S., 512; *Evans vs. State Bank*, 141 U. S., 107.

* * * * * * *

"We have patiently examined the evidence contained in the record, and it is impossible for us to reverse the decree for error or mistake in the conclusions of the master and the court, depending, as they do, upon the weighing of conflicting testimony, and entitled, as they are, to every reasonable presumption in their favor.

"The decree must be *affirmed*."

In *Davis vs. Schwartz*, 155 U. S., 631, the court says (636-637):

"1. As the case was referred by the court to a master to report, not the evidence merely, but the facts of the case, and his conclusions of law thereon, we think that his finding, so far as it involves questions of fact, is attended by a presumption of correctness similar to that in the case of a finding by a referee, the special verdict of a jury, the findings of a circuit court in a case tried by the court under Rev. Stat. § 649, or in an admiralty cause appealed to this court. In neither of these cases is the finding absolutely conclusive, as if there be no testimony tending to support it; but so far as it depends upon conflicting testimony or upon the credibility of witnesses, or so far as there is any testimony consistent with the finding, it must be treated as unassailable. *Wiscart vs. D'Auchy*, 3 Dall., 321; *Bond vs. Brown*, 12 How., 254; *Graham vs. Bayne*, 18 How., 60, 62; *Norris vs. Jackson*, 9 Wall., 125; *Insurance Co. vs. Folsom*, 18 Wall., 237, 249; *The Abbotsford*, 98 U. S., 440.

"The question of the conclusiveness of findings by

a master in chancery under a similar order was directly passed upon in *Kimberly vs. Arms*, 129 U. S., 512, in which a distinction is drawn between the findings of a master under the usual order to take and report testimony, and his findings when the case is referred to him by consent of parties, as in this case. While it was held that the court could not, of its motion or upon the request of one party, abdicate its duty to determine by its own judgment the controversy presented and devolve that duty upon any of its officers, yet where the parties select and agree upon a special tribunal for the settlement of their controversy, there is no reason why the decision of such tribunal, with respect to the facts, should be treated as of less weight than that of the court itself, where the parties expressly waive a jury or the law declares that the appellate court shall act upon the finding of a subordinate court. 'Its findings,' said the court, 'like those of an independent tribunal, are to be taken as presumptively correct, subject, indeed, to be reviewed under the reservation contained in the consent and order of the court, when there has been manifest error in the consideration given to the evidence, or in the application of the law, but not otherwise.' As the reference in this case was by consent to find the facts, we think the rule in *Kimberly vs. Arms* applies, and as there is nothing to show that the findings of fact were unsupported by the evidence, we think they must be treated as conclusive. To the same effect are *Crawford vs. Neal*, 144 U. S., 585, 596; *Furrer vs. Ferris*, 145 U. S., 132."

The present Rule 61 of the trial court relative to exceptions to reports of auditors allows the parties fifteen days to except, but the court within such period may enlarge the time. In order to discourage the filing of frivolous exceptions or merely to cause delay, the courts may award costs for every exception overruled. Rule 83 of the federal courts of equity allows the parties one month to except. Apart from some slight differences as to time, etc., the law relating to exceptions to reports of masters or auditors is the same in the Supreme Court of the District of Columbia as in the federal

courts of equity. In *Mason vs. Crosby*, 3 W. & M., 258, it is said that immaterial errors are no ground for setting aside or recommitting the master's report; the office of the master is somewhat like that of a jury in courts of law—when the master has once decided matters of fact and no legal question is involved in them, his report should stand, unless reasons exist as strong as would justify setting aside a verdict; a clear mistake, or a probable abuse of power, should of course be corrected, but the court will not retry or re-examine questions of fact raised before the master. In *Story vs. Livingston*, 13 Pet., 359-366, the court says that strictly, in chancery practice, no exceptions to a master's report can be made which are not taken before a master; the purpose of filing exceptions before a master is to save time and give him an opportunity to reconsider his opinion, and the exceptions should state article by article the particulars of the report which are intended to be excepted to. In *Stanton vs. Alabama Ry. Co.*, 2 Woods, 506, it is said that where the exceptions are vague and general and require of the court the performance of duties which belong to the master and counsel, they may be overruled. In *Troy vs. Corning*, 6 Blatchf., 328, it is said that an exception should always be taken on the spot to each ruling of the master that the party intends to contest, and it is the duty of the master to note the fact in his minutes; the exception need not be drawn up in form; the reason for the practice exists in the fact that, if the party in whose favor the ruling was made is notified that an exception is taken and the question is to be revised, he can waive the point by admitting or withdrawing the evidence. In *Harding vs. Handy*, 11 Wheat., 103-126, the court holds that in passing on exceptions to a master's report, the exceptions thereto are to be regarded so far only as they are supported by the statements of the master, or by evidence brought to the attention of the court by particular reference *in the exceptions;* but such testimony need not be reported further than it is relied on to support, explain, or oppose

particular exceptions. In *Burke vs. Davis*, 81 Fed. Rep., 907-910, the court says that in the absence of exceptions—and this means exceptions in legal form—there can be no inquiry into the correctness of the findings of fact in the master's report. In *Chandler vs. Pomroy*, 87 Fed., 262-267, it is said that the court will not perform the work which the master should do; every presumption is in favor of the correctness of the master's decision on questions of fact.

In *Webb vs. Powers*, 2 W. & M., 497, it is held that the presumptions are in favor of the master's report upon matters of fact; in *U. S. Trust Co. vs. Mercantile Trust Co.*, 88 Fed., 140-153, it is held that where the parties have stipulated that the master who takes the proofs may report the same with his findings of fact and conclusions of law thereon, his findings are conclusive and binding on the court, so far as they are based upon conflicting evidence or the veracity of witnesses, or so far as there is evidence consistent with his findings.

In *McNamara vs. Home Co.*, 105 Fed., 202-204, it is said that where, by consent, a cause is referred to a master to make findings of fact and conclusions of law, exceptions to his findings of fact should be first submitted to the master for his consideration and action so that he may know in what particulars his report is objectionable and be enabled to reconsider his opinion and correct his errors. In *Baldwin vs. Liverpool Co.*, 124 Fed., 206-208, the rule is reasserted that no decree can be rendered upon the proofs of matters not charged in the bill any more than upon a case alleged but not proved. In *Kimberly vs. Arms*, 129 U. S., 512-524, it is said that on written consent of the parties entered as an order of the court, the questions of law and fact may be referred to a master, and his finding is usually conclusive.

And what is said about the generality of the exceptions applies to all of the exceptions in this case. Each of them is of the most general nature and none of them points out

specifically the error or omission excepted to. The court, in *Richardson vs. Van Auken*, 5 App. D. C., p. 211, says that—

> "On such exception there is nothing to direct the attention of the court to any particular omission or error; and upon such general exception the court is required to go over anew the entire case, wholly without the aid of the auditor's examination and report. Such a practice the court cannot sanction."

In that case the court considered the subject of general exceptions to the report of the auditor, citing a number of cases, the latest one being that of the *Sheffield Railroad Company vs. Gordon*, 151 U. S., 285, condemning the practice; and it is believed that the rule laid down by the court is peculiarly applicable to the case at bar. In addition to the cases referred to in *Richardson vs. Van Auken*, the following may also be cited: *Haller vs. Clark*, 21 D. C., 128; *York vs. Tyler*, 21 D. C., 265.

In *Green vs. Bishop*, 1 Clifford, 191, Mr. Justice Clifford said:

> "Exceptions to a master's report are written enumerations of the errors alleged by the complaining party and of the corrections he requests to have made; and they should be so framed as not merely to allege error in general terms but should be sufficiently definite and explicit to enable the court understandingly to decide on each point in dispute. Such appears to be the just and convenient rule to be deduced from the best considered modern cases upon the subject, and it is one of great importance in this class of legal investigations and ought in general to be strictly enforced. Were it otherwise the reference to the master would be of little or no avail, as it would involve the necessity for the court to look into the whole testimony laid before him and to decide the controversy as upon final hearing without reference as on appeal. General allegations of error without pointing to any particulars are clearly insufficient for the reason that if allowable the losing party might always compel the court to hear the case anew, and should that practice

> prevail references such as made in this case would become both useless and burdensome, as they would only operate to promote delay and increase the expenses of litigation without relieving the court from any of the labor of the trial or ever accomplish anything of value to either party."

Attention is again invited to the rule of practice (*Richardson vs. Van Auken, supra; Grafton vs. Paine,* 7 App. D. C., 255; *Smith vs. The American Security and Trust Company,* 12 App. D. C., 192) that the findings of a master or auditor, concurred in by the court below, are to be taken as presumptively correct, and will be permitted to stand unless some obvious error has intervened in the application of the law, or appears in the decree under which he acts, or some important mistake has been made in the evidence and it has been clearly pointed out and made manifest. If this rule be applied here, it is asserted with confidence that the decree appealed from must be affirmed.

It is also to be observed that all of the evidence before the auditor has not been included in the transcript of the record filed in this court, many of the exhibits mentioned in his report not being contained in the record here. And there is not even a certificate by him that the entire evidence was sent up with his report. The Supreme Court, in *Sheffield Railroad Co. vs. Gordon,* just cited, say that under such circumstances it is impossible to impeach a master's conclusions upon the evidence.

Some of the exceptions of the appellants to the auditor's reports are similar to those which, by reason of their generality and vagueness, were disallowed by the Chancellor in *Methodist Episcopal Church vs. Jaques,* 9 Johns. Ch., p. 115 (approved in *Story vs. Livingston,* 13 Pet., p. 371), where the defendant claimed credit for expenditures indicated on a paper which had been filed before the master. The Chancellor said that the—

> "paper is some loose and random charge of disbursements without accuracy or consistency. * * * The

defendant had already been allowed such of his disbursements as were supported by proof, and as to many charges he had the benefit of a most liberal indulgence, and, perhaps, a great deal too much, to be consistent with the demands of a severe and exact justice."

Assignments of Error.

First Assignment.

The first assignment of error is as follows:—

It was error not to hold that the special-partnership agreement between Gilbert Moyers and George B. Edmonds forming the basis of this suit, was dissolved either by the adjudicated insanity of Edmonds, in 1891, or at any rate by his death, in 1896, and in not holding, therefore, that the utmost measure of recovery by the estate of Edmonds would be one-half the reasonable value of services rendered by the special partnership prior to such dissolution of the special partnership, less one-half partnership expenses incurred and less advances made by Moyers to Edmonds. See:

Special-partnership agreement, p. 2, Record.
Edmonds adjudged insane in 1891, p. 165, Record.
Edmonds died Oct. 31, 1896, p. 26, Record.

It will be observed that this assignment of error is based upon the failure of the lower court not to "hold" certain things. By this is probably meant that the court erred in not making certain rulings. There is nothing in the assignment of error to indicate that the lower court was ever asked by the appellants to make any such ruling, and there is no reference even to any part of the record to show that any request was ever made for any such ruling and denied. The question sought to be raised by this assignment of error is not raised by the pleadings, and the only way that it could have been raised would have been by offer of proof before the master or auditor.

Paragraph 2 of Rule 21, relating to briefs, provides that

> "When the error alleged is to the admission or to the rejection of evidence, the specification shall quote the full substance of the evidence admitted or rejected."

The assignment of error in the case at bar absolutely violates this rule. It not only fails to quote any evidence rejected upon the subject of the assignment of error, but fails to show that any such evidence was ever offered. Again, Rule 21 provides:

> "When the error alleged is to a ruling upon the report of a master, the specification shall state the exception to the report and the action of the court upon it."

The assignment of error in question, it will be observed, does not show that any exception was ever taken to any report of the auditor, nor does it show that the court below ever took any action upon any such exception.

In the argument under this assignment the appellants, in their brief, state that the point was raised in the case as early as 1902, and refer to defendant's motion on page 218 of the record. Reference to that page of the record will show that there is copied a motion made four months after the filing of a report of the auditor of the lower court to reopen such report and re-refer the cause to the auditor with directions to allow such compensation to the defendant. The then rule of the lower court required exceptions to the auditor's report to be filed within thirty days. No provision was then or now is made for a re-reference on error assigned four months after the date of the report. Again, the motion referred to, according to the record, was never brought to the attention of the trial court and was never acted upon by that court in any way. Apparently it was filed by the then counsel for the defendant and he afterwards, ascertaining that it was a motion that could not be entertained, abandoned

it. The mere *ex parte* filing of this motion amounted to nothing (*Gilbert vs. Endowment Association*, 10 App. D. C., 316, 334). For these reasons it is submitted that the first assignment of error should be totally disregarded.

If the assignment of error is to be considered at all, its consideration need be brief. There can be no question that the partnership between Edmonds and Moyers was technically dissolved by Edmonds' death. But this did not terminate Moyers' trusteeship for Edmonds and his estate. Stripped of its verbal disguise, appellants assert the bald principle that on the death of a *cestui que trust* the trustee becomes *ipso facto* the absolute owner of the trust estate, accountable to no one for its appropriation to his own use.

The point is made by the appellants that Moyers should have been allowed compensation for services performed in the prosecution of the partnership cases after the dissolution of the partnership. No claim for such compensation was made in the answer to the bill of complaint. The claim made by the answer was that the defendant had purchased the interest of his deceased partner in the partnership. This, then, was the issue raised by the pleadings. It is a fundamental rule of equity practice that the parties are confined to the issue made by the pleadings, as well as in the court of law.

Here the appellants seek to go beyond the issue raised by the answer, that issue having been decided against their intestate, and raise an issue which was not involved in the original pleadings. As already pointed out, this assignment of error does not point out how, if at all, this issue was raised in the course of the taking of the testimony before the auditor, and the only reference to any place in the record where the point was ever made is to an abortive motion which was never brought to the attention of the court below.

Even if the appellants or Moyers had offered to prove that Moyers was entitled to compensation, such mere offer would have been insufficient. A mere proffer of evidence is useless, for without the evidence itself set out in the record

there is nothing for the court to consider or act on (*Fields vs. Central National Bank*, 10 App. D. C., 1, 4-5; see Rules 13 and 35 of this court and Rules 11 and 12, C. C. A.; *Ferry vs. Henderson*, 32 App. D. C., 41, 47; *Turner vs. American Security and Trust Co.*, 29 App. D. C., 460, 469; and see reporter's foot-note).

Assuming, however, that the first assignment of error means (what it does not state) that the lower court did not rule that compensation should have been allowed the surviving partner, Moyers, for services performed after the dissolution of the partnership by the death of his copartner, Edmonds, and that this court will examine this record of over seven hundred pages to ascertain whether the question was ever properly raised below, it will be briefly discussed.

This court has said in *Denver vs. Roane*, 99 U. S., 355, which was a suit for a partnership accounting very similar to the one at bar, as follows:

> "So it is held that where partnerships are equal, as is true in the present case, and there is no stipulation in the partnership agreement for compensation to the surviving partner for settling up the partnership business, he is entitled to no compensation. This is the rule in regard to what are commonly called commercial partnerships, and the authorities cited refer to those. There may possibly be some reason for applying a different rule to a case of winding up partnerships between lawyers and other professional men, where the profits of the firm are the result solely of professional skill and labor."

The case of *Denver vs. Roane*, 99 U. S., 355-371, involved three specific points, which may be briefly stated as follows:

I.

> "P. 357. Bill in equity may be maintained by personal representatives of deceased partner against survivors for all accounting and discovery."

II.

"P. 358. Surviving partner is entitled to no allowance for winding up the business, unless otherwise stipulated; and this rule applies to partnership between attorneys."

III.

"P. 361. Where attorney at law refuses to act as a partner and repudiates his obligation to aid in prosecution of one of firm's cases, he is not entitled to fees subsequently earned in the cause."

To point 1 this case was cited and followed in *Dye vs. Bowling*, 82 Mo. App., 592, holding laches where plaintiff was ignorant of amount collected by partner no bar to bill in equity to adjust partnership accounts; in *Brew vs. Cochran*, 141 Fed., 462, holding where partnership articles provided that on death of any member his capital should remain in firm until firm expired by term, and all but one partner died, and he transferred business to corporation in exchange for its stock, which he held as trustee, administrator of one of deceased partners could sue for accounting prior to closing of partnership; and in *Bowdish vs. Metzger*, 71 Kans., 754, a suit to remove cloud and quiet title.

To point 2 it is cited in *Little vs. Caldwell*, 101 Cal., 560, holding surviving partner must complete business of firm and is entitled to no compensation; *Osment vs. McElrath*, 68 Cal., 471, holding after dissolution of law partnership each partner entitled to share in fees of unfinished business; *Justice vs. Lairy*, 19 Ind. App., 279, holding member of law firm appointed circuit judge has no interest in fees earned by other member in winding up the business; *Porter vs. Long*, 124 Mich., 592, refusing compensation to son for managing partnership business after father's death, latter being partner. (See note in 112 Amer. St. Rep., 846.)

To point 3 it is cited and followed in *Shaeffer vs. Blair*, 149 U. S., 258, and *Blair vs. Shaeffer*, 33 Fed., 224, both holding *where agent acts fraudulently he forfeits all rights to compensation under the contract;* (see extensive notes in 40 Amer. St. Rep., 570, and 69 Amer. St. Rep., 422); *Miller vs. Hale*, 96 Mo. App., 430, holding where no abandonment shown one partner entitled to accounting for sums paid other as partner on architect's contract.

Denver vs. Roane, supra, was an appeal from the Supreme Court of the District of Columbia, decided May 5, 1879, and was a suit involving the settlement of partnership accounts between attorneys and counsellors at law. The official syllabus is as follows:

> "1. Every partner is under obligation to exercise due diligence and skill, and devote his service and labors for the promotion of the common benefit of the concern, without any reward or compensation, unless there be an express stipulation for compensation.
>
> "2. Where there is no stipulation in the partnership agreement, for compensation to a surviving partner for settling up the partnership business, he is entitled to no compensation.
>
> "3. He who acts so as to treat the articles of copartnership as a nullity as it regards his own obligations, cannot complain if they are so treated for all purposes."

The case is too long to quote *in extenso*, but we submit that it is peculiarly pertinent to the principal aspects of the instant case, and therefore we invite the court's careful perusal of that opinion.

Many of the cases cited in the appellants' brief were cases of partnership accounting between the legal representatives of deceased law partners and surviving law partners, and the courts held that in the circumstances of the particular cases the surviving law partner who continued the prosecution of cases pending at the death of his co-

partner should be allowed compensation for such services. There can be no doubt that the application of such a rule would in many cases work justice. But as Mr. Justice Holmes said in *Thayer vs. Badger*, 171 Mass., 279:

> "The tendency is to deal with such questions in their peculiar circumstances rather than by absolute rules."

And as was said by the same court in *Robinson vs. Simmons*, 146 Mass., 167:

> "We think a just rule to be deduced from the authorities is *where there are no circumstances which render its application inequitable*, the profits should be divided according to the capital, after deducting such share of them as is attributable to the skill and services of the surviving partner. *When his good faith and fairness are not impeached*, the most that the representative of the deceased partner can justly demand is that he should account to them for their capital, and in addition for whatever it has earned."

It therefore becomes material to ascertain whether, in the circumstances of this particular case, it would be equitable or inequitable to allow compensation to the surviving partner. In holding that the evidence did not show an abandonment by Edmonds of his rights under the partnership agreement—one of the many contentions made by the appellants in this case—the Court of Appeals has said (R., 392):

> "It appears incidentially that Edmonds took little or no part practically in the actual prosecution of the cases; but it does not appear that he was ever called upon, or even expected, to do so. The agreement is ambiguous in respect of the particular nature of the services to be performed by each of the special partners, but rather seems to contemplate that the active prosecution of the cases should be conducted by Moyers. This was evidently the construction adopted and acted upon by Moyers. Referring to the agreement in his testimony, he said, 'It was not

a partnership agreement. It was an employment of me to attend to certain business for him in the Court of Claims in regard to certain cases. You might style it a limited partnership. There was no general partnership.' Again one Hill, who had a desk in the office of Moyers, and who was called as a witness by the latter to prove the payment of $500 by him to Edmonds, said that he had read the 'partnership agreement by which Col. Moyers was to take charge of Mr. Edmonds' business. I know that Col. Moyers had agreed to take charge of Mr. Edmonds' business, and conduct it for him; I knew that in 1888, when I was in the office with Col. Moyers.' We have before mentioned the apparent acquiescence of Moyers in the inactivity of Edmonds, there being no evidence tending to show that he ever called upon him for any assistance."

Consaul vs. Cummings, 24 App. D. C., pp. 42-43.

As the auditor put it:

"Both of these parties prosecuting the same class of claims against the Government. Edmonds had a considerable number of such claims in his charge and control with powers of attorney and fee agreements. It is fair to assume that both parties saw advantages in a combination of interest in regard to these claims, Edmonds transferring to Moyers an interest to the extent of one-half of the fees in consideration of the prosecution of the claims by Moyers. Edmonds contributed his share to the joint business and Moyers was bound to carry out his undertakings, the contract being executed on the part of Edmonds, and to be complied with on the part of Moyers. The Court of Appeals has said as to the rendition of services, the defendant Moyers had construed the contract by declaring that he did not expect Edmonds to render any services in the prosecution of the claims" (R., 179).

Under these circumstances how can it be said that the death of Edmonds raised any equities in favor of Moyers,

so far as compensation for services in conducting the business was concerned? Edmonds' death, in this respect, meant absolutely nothing to Moyers, for thereby he was not deprived of the aid and assistance of his copartner, nor was he required to perform greater labor than he would have been required to perform had Edmonds lived.

As for the contention of appellants that the powers of attorney which Edmonds received from his clients terminated with his death, it is scarcely necessary to say anything. Whether his insanity or death had such an effect is questionable, in view of the fact that the powers were irrevocable by their express terms and contained powers of substitution; but whether they were or not, the question is not involved here, as there is no controversy between the claimants and Edmonds' estate. They recognized the continued existence of the powers of attorney and the fee agreements, and they received their full share of the judgments recovered for them. They have no complaint to make and have made none. The question here is between Moyers' estate and Edmonds' estate solely, and the obligations of Moyers, as surviving partner, to the estate of his deceased partner.

It is now claimed by appellants, as it was on the second appeal below, that Moyers was not shown to have had any notice or knowledge of Edmonds' fee contracts and powers of attorney until after the institution of this suit. The only affirmative evidence in the record to show that Moyers did not have notice or knowledge of the retention by Edmonds of the powers of attorney and fee contracts is Moyers' own testimony, which it is contended, and which the court below properly held, was inadmissable under the statute relating to testimony of conversations and transactions with decedents.

But, aside from this, it is apparent from the evidence that Moyers not only had knowledge of, but tacitly consented to, the retention by Edmonds of the fee contracts and powers of attorney which were found among Edmonds' effects after his death. In the first place, Moyers admitted there were

225 cases turned over to him by Edmonds, which 225 cases were listed in the schedule of 382 cases found attached to Edmonds' duplicate original of the partnership agreement (R., p. 386). In all of the claims listed in such schedule, Edmonds had in his possession, at the time of his death, fee contracts and powers of attorney. If Moyers did not have knowledge of, and consent to the retention by Edmonds of, the powers of attorney and contracts, why did he, and not Edmonds, have then, at least in those 225 cases? Does this not show that the understanding of the parties was, that Edmonds was to retain these powers of attorney and fee contracts? Again, in the preliminary negotiations between the parties, Edmonds had prepared a rough draft of an agreement which contained the sentence—

> "The powers of attorney which was issued to said Edmonds shall be retained by him, and he shall have power to collect all sums that shall be awarded on these cases or any of them" (R., 161).

This draft was not satisfactory to Moyers, and he dictated the agreement that was afterwards executed, and which does not contain the sentence quoted, but which does provide:

> "And it is hereby agreed and understood that the said Gilbert Moyers shall *represent* and be associated with me in the prosecution of said claims," etc. (R., 161).

The legal result, of course, is that the sentence quoted from the unsigned instrument, not having been incorporated in the executed one, forms no part of the latter, and Moyers cannot be said to have expressly consented to the exclusive retention by Edmonds of the powers of attorney and the exclusive right on Edmonds' part to the collection of the fees. But the executed agreement does not negative the right of Edmonds to do so, and, being silent in that respect, Edmonds had as much right to retain the powers of attorney and collect the fees as his partner, Moyers, and the quoted

sentence from the unsigned agreement is tantamount to a declaration by Edmonds to Moyers that he had such powers of attorney.

This sentence in the rough draft also would seem to throw considerable light on the ambiguous expression in the executed agreement that Moyers was to "represent" Edmonds in the partnership cases, coupled as it is by Moyers' own testimony that the transaction between him and Edmonds was not a partnership, but was in reality the employment of him by Edmonds to attend to certain business for him (Edmonds) in the Court of Claims; and it would seem to follow that Edmonds, in the capacity of the person represented or the empolyer, had a greater right to the actual possession of the powers of attorney and fee contracts than Moyers. If this was their relation toward each other, it is perfectly clear why Edmonds retained the powers of attorney and fee contracts, and is consistent with knowledge or notice on Moyers' part that he had done so and with the theory that Moyers consented to such retention. It is certain that Moyers never objected to the retention by Edmonds of the contracts and powers of attorney and never demanded their surrender to him, although by his own admission the partnership covered at least two hundred and twenty-five cases, in all of which Edmonds and not Moyers had possession of the powers of attorney and fee contracts.

It should be borne in mind that all of the partnership contracts were for contingent fees—that is, fees not payable by the claimants unless the claims were successfully prosecuted and appropriation made by Congress to pay them. All contracts and powers of attorney were originally procured by Edmonds. It seems absurd to say that if, after making the agreement with Moyers to prosecute the claims for one-half the fees, Edmonds died, Moyers would have the right to prosecute the claims and then charge the representative of Edmonds' estate for his services in so doing. If he had

this right in successful cases, he would have the same right in unsuccessful cases.

As to the subject of compensation to a surviving partner, see the notes in 66 *L. R. A.*, 821; 17 *L. R. A., N. S.* 396, and 5 *Am. & Eng. Ann. Cas.*, 664; and as to the effect of the death of a partner on executory contracts, see the note in 1 *Am. & Eng. Ann. Cas.*, 401. References have already been given to the valuable notes on these subjects in the American State Reports.

As to executory contracts only partly fulfilled, the death of one partner does not absolve the other from rendering the services contracted for, and the active functions of the partnership are continued in existence until the full performance by the surviving partner.

> "This rule is particularly applicable in the settlement of the partnership accounts of attorneys-at-law, when the firm has been dissolved by the death of one member, leaving contracts not fully performed, often constituting a large part of the assets of the partnership, and which it is the duty of the survivor, as far as possible, to complete and preserve for the benefit of the firm. While it is certainly true, when a professional partnership between attorneys-at-law is dissolved by the death of one, the survivor is entitled to his own future earnings, and is not required to make an allowance in the settlement of the partnership accounts for what may be termed the good will of the partnership, or for the profits of such future business as may have been given to him by former clients of the firm; still, in regard to unfinished business entrusted to the firm, and which the client permits the surviving partner to complete, such contract of employment although not capable of assignment is still to be viewed by a court of equity as an asset of the partnership; and it is none the less an equitable asset when, as in this case, the compensation for such services is entirely contingent upon the final success of the litigation in which the services are to be rendered."
>
> *Little vs. Caldwell*, 101 Cal., 553.

The contracts with the claimants and powers of attorney from them having been in Edmonds' name, and he having turned over the cases to Moyers for prosecution, it is perfectly apparent that had Moyers collected the fees and converted them to his own use, the estate of Edmonds would have been liable to the claimants.

> "If, after dissolution of the partnership by death or otherwise, the estate of the retiring partner be liable for the tortious or negligent act of his late partner in reference to partially fulfilled executory contracts, * * * it would be illogical and inequitable to deny the representatives of the deceased partner an equitable participation in the compensation accruing by reason of the subsequent performance of such contracts by the surviving partner and which the survivor was in duty bound to perform for the benefit of the firm. From the foregoing it necessarily follows that the surviving partner could not of his own motion procure release from this duty or service and refuse to carry out to its ultimate completion the work which had been entrusted to the firm before the death of his partner; nor could the client with the intent of defeating the claim of the estate of the deceased partner re-employ the survivor of the law firm, and thus, by making a new contract, have the benefit, without making compensation therefor, of the services of the deceased partner, and by such contract only procure services to which he was already entitled."
>
> *Clifton vs. Clark*, 83 Miss., 446; 66 L. R. A., 821.

> "Equity and good conscience forbid the surviving partner to abandon the business of the firm and contract to the detriment of the financial interest of his deceased partner's estate."
>
> *Id.*, p. 828.

So that viewing the partnership between Moyers and Edmonds as an ordinary law partnership, in which each of the partners was an active working member, it is clear that on Edmonds' death and the resulting dissolution of the partner-

ship, Moyers' duty both to the clients and to the estate of his deceased partner was to carry out these contracts to a conclusion, and to distribute the recoveries in the cases in accordance therewith and in accordance with the contract of partnership.

But the question whether Moyers' estate should be allowed compensation for services performed after the death of his co-partner Edmonds should be viewed from still another angle. As already stated, in *Robinson vs. Simmons, supra*, the court was careful to point out that compensation for services to a surviving partner should be given only when "his good faith and fairness are not impeached." The inquiry therefore naturally is, does this record impeach the good faith and fairness of Moyers? An examination of the record will show that from the inception of this case until his death, Moyers was engaged in a most unconscionable effort to deprive the estate of his copartner of any part of the partnership assets. His sole defense to the suit in the first instance was that he had bought out the interest of his deceased partner. The finding of the lower courts was against this defense, and the testimony showed that not only was this not a fact, but that such contention was an afterthought and was bolstered up by testimony of the flimsiest, weakest character. When this defense was found to be untenable by the trial and appellate courts he was required to turn over to receivers, who had been appointed, $9,000 of partnership moneys which he had commingled with his own private funds and converted to his own use. He resisted the effort to compel him to do so until the last, taking the matter to the court of appeals where this point was decided against him (*Moyers vs. Cummings*, 17 App. D. C., 269). Before the auditor he was convicted of attempting maliciously and deliberately to destroy documentary evidence in the matter of the Anna Hunt claim in which the fee was a large one. See the auditor's report at page 220 of the record. He accused his deceased partner with having tampered with his clerks in an effort to defeat the claim of the latter's administrator. (See R., 159-160.) He first

testified that his partnership with Edmonds related to only a few claims, and when it was conclusively demonstrated that it related to several hundred claims, *he produced a list of two hundred and twenty-five claims in order to secure allowances of expenses that he had incurred in their prosecution* (R., 487-8). Finally, after his death, one of the present appellants, who are his administrators, is shown to have aided him in his efforts to defeat the claim of the estate of his deceased partner. Thus, in the matter of the Edge and Smith claims, which appellee had shown to be partnership claims, it appeared that the appellants, who were son-in-law and daughter, respectively, of Moyers, procured contracts with the claimants at the instigation of Moyers in order to defeat the rights of complainant, Edmonds' administrator. When called upon to account for the fees received, they contended that Moyers had abandoned their prosecution, and that therefore they were entitled to the fees. Mr. Consaul, one of the appellants, was asked upon what specific grounds Colonel Moyers had abandoned the prosecution of the Edge and Smith claims. He replied:

> "The first claim mentioned which he abandoned was that of Edge. He discovered that this case was claimed by the complainant herein as being Moyers and Edmonds' partnership claim, and to use his exact language, as nearly as I can repeat it, he said something to the effect that those damn scoundrels should not reap the fruits of his labors, and that the case might rot so far as further action on his part was concerned."

Mr. Consaul was then asked whether he then had knowledge of the pendency of this litigation, and he replied, "Yes." Asked whether he knew by Moyers' reference to this suit that it was claimed by the complainant herein that the Edge case was a partnership case in which the estate of Edmonds claimed a part interest, he replied, "Yes, from our conversation." Mr. Consaul then testified that Mr. Moyers used the same language in respect to the Smith claim. Asked why

he undertook the prosecution of the Edge and Smith claims when he had knowledge of the pendency of this litigation between the complainant and Moyers, Mr. Consaul replied: "I have always considered that I was a stranger to the alleged contract between Moyers and Edmonds and to the litigation." He further stated that he made no inquiry whatever as to who was to have the benefit of the expenditures theretofore made in these two cases. Then he stated: "If the complainant had any claim against Gilbert Moyers in the premises that was something that did not concern me in the least" (R., 628-630).

As the appellants by their first assignment of error do not confine their claim that their intestate was entitled to compensation for services in any particular cases, they now stand in the rather remarkable position of claiming that he was entitled to compensation for services even in cases of which he deliberately abandoned the prosecution in order to defeat the rights of the estate of his dead partner.

Putting to one side for the moment, for the sake of the argument, all other considerations in the case, the record affirmatively impeaches the good faith and fairness of both Moyers and his representatives to such an extent that this fact alone is sufficient to debar their claim for either all of the fees collected, or for a special allowance for services rendered, after the insanity or death of Edmonds; and that in these circumstances their present claim is unconscionable is the clear result of the decisions in *Denver vs. Roane*, 99 U. S., 355-371, and *Robinson vs. Simmons*, 146 Mass., 167. And see the valuable notes hereinbefore mentioned, which also cover this point.

Second Assignment.

The second assignment of error is that the court below erred in allowing interest to the complainant, the appellee, on any sum found to be due as a result of the proceedings

had, from a date prior to the entering of the final decree pursuant to the mandate of this court.

This assignment of error, like the first, violates Rule 21 of this court, and therefore should be disregarded. It should also be disregarded for another reason, and that is, that by it the appellants are asserting for the first time as error a ruling which they assented to in the court below. In the opinion of the Court of Appeals of May 24, 1904 (R., 396), the court said:

> "* * * By the terms of the decree ordering Moyers to pay the balance found to be due on the accounting, interest has been awarded against him from the time when he should have accounted to the plaintiff therefor, namely, September 16, 1899. *The appellants offer no objection to this award of interest,* but complain that a similar award was not made respecting the sum of $1,470 found to have been advanced by Moyers to Edmonds in 1892. We are of the opinion that this claim is a just one, and that in restating the account, interest on that sum should be allowed in favor of Moyers from, say, the first day of January, 1893, until September 16, 1899."

In the restatement of the account by the auditor in accordance with this opinion of the Court of Appeals, interest was allowed the appellants on the $1,470. And yet we now have the appellants assigning as error a ruling of the lower court in which they not only acquiesced, but of which they took advantage in order to secure an additional allowance to themselves. In other words, after having taken advantage of this ruling of the court to secure an additional allowance of interest to themselves, and having so obtained it, they now come before this court and claim that the action of the lower court, of which they so took advantage, was error. Manifestly, such an assignment of error is entitled to no consideration.

The intestate of the appellants, and the appellants, have kept the appellee in court in this case for twelve years. The intestate, Gilbert Moyers, in 1899 promised to account to the

appellee as administrator of his deceased partner. He failed to do so, and suit for an accounting was brought in September, 1899. Since that time he, and after his death the appellants, persistently resisted an accounting, fighting the case year after year and in every local court and finally bringing it to this court. If under such circumstances, the appellee, who has been kept out of the money due him as administrator for twelve years, is not entitled to interest, then in no case should interest ever be allowed to a successful party.

As to the liability of a surviving partner for interest on the share of his deceased partner, see the note in 4 Am. & Eng. Ann. Cas., 180.

Third Assignment.

The third assignment of error is that it was error in the lower court not to hold that the bill should be dismissed because of laches of the complainant. Laches were not set up in the answer of the defendant, nor has this defense ever been made until now, in this twelve years of litigation. It is plainly an afterthought, and in a few words it can be demonstrated that counsel who prepared this assignment of error, and the argument under it, never searched the wilderness of the record in this case to ascertain the facts; otherwise this assignment would never have been made. The original bill in this case, which was filed September 16, 1899, sought an accounting by the then defendant of fees collected on claims appropriated for by the act of Congress *passed six months before,* namely, on March 3, 1899. The complainant was appointed administrator on August 2d of the same year (R., 2). Between the date of the act of Congress and the filing of the bill, the complainant made repeated efforts to secure an accounting from the defendant, which accounting the defendant by his letters of May 26, July 21, and August 3, and by the letter of his attorney of September 11,

1899, promised to make (R., 7, 194). Because of his failure to do so, the bill was filed. Until the claims mentioned in the bill were collected under the appropriation act of March 3, 1899, the defendant, of course, had collected no fees on account of their prosecution, as they were prosecuted under contingent fee contracts, and no accounting could have been demanded of him. Edmonds, the deceased partner, had died in October, 1896, leaving no estate except his contingent rights under the fee contracts in the claims which he had turned over to Moyers. There was no occasion for the appointment of an administrator until something should become due his estate. Between October, 1896, the date of Edmonds' death, and August, 1899, the date of the complainant's appointment as administrator, there was no one representing his estate.

The answer to the bill of complaint set up the defense that the defendant had bought out the interest of his deceased copartner in the partnership claims, making final payment on account of the purchase price in 1892. In the taking of testimony before the auditor it developed that the Susan Merrill claim was included in the partnership agreement. That was a claim which had been appropriated for under the act of 1891 and had been paid in 1892. The fee in this case was $470.50, of which Edmonds was entitled to one-half, or $235.25. The complainant claimed that if any payment at all was made by the defendant to Edmonds in 1892, it was in settlement of one-half of the fee due him, Edmonds, on account of this Merrill case. When the claim came before the auditor he allowed Moyers all payments claimed by him to have been made by him to Edmonds during the latter's lifetime, and he allowed Edmonds' administrator, the complainant, the one-half of the Susan Merrill fee, which should have been paid Edmonds in 1892. No objection was made by the deceased defendant Moyers to this allowance, and in all the accountings thereafter made the allowance stood without objection on the part of the deceased defendant or on

the part of the appellants, his administrators. So that it will be observed that so far as the Susan Merrill claim is concerned, it can play no part in determining whether the complainant was guilty of laches in filing the bill of complaint, as it is not mentioned therein, and no claim for relief was based upon it.

Laches, of course, mean an inexcusable delay in asserting a right, or a neglect to do what in the law one should have done, for an unreasonable, unexplained, or inexcusable length of time, under circumstances permitting diligence (24 *Cyc.*, 840; 16 *Cyc.*, 252).

In the case at bar the complaint of the appellants, now made for the first time after twelve years, seems to be that the appellee during the time he was the guardian of Edmonds neglected to warn Moyers that if he, Moyers, should succeed in the future in collecting any partnership claims, he, the appellee, would then demand an accounting; and also that the appellee after the death of Edmonds, and during the period that elapsed before he was appointed administrator of Edmonds' estate, failed to give a similar warning to Moyers. The appellants in their brief, page 64, say, "Cummings never intimated in any way to Moyers during the period from 1891 until 1899 that Moyers was to be called upon to account for any share or interest in the fees in the cases here involved." Appellants seem to lose sight of the fact that no right to demand an accounting existed until after March, 1899, when Moyers received something for which he could account. Whether it was the moral duty of the appellee, before Moyers collected the money, to tell Moyers that when he did collect he would be called upon to account for it, is distinct from the question whether it was his legal duty to do so. On the first question, it may be observed that Cummings had no reason to suppose that Moyers, who was the trustee of his deceased partner, would violate his trust by converting the partnership assets to his own use when they should be collected. On the second

question, it need only be observed that the cause of action, as set forth in the bill of complaint in this case, did not accrue until Moyers collected the money under the act of March, 1899, and that there was in existence no person who could enforce that right of action until the appointment of the administrator, in August, 1899. The suit was brought in the following month. How, then, can it possibly be said that there was any delay in asserting appellee's legal right, or in neglecting what in the law should have been done, for an unreasonable length of time? As soon as there was anything to account for, prompt demand was made upon Moyers for an accounting. The delay of a few weeks in bringing the suit was caused by Moyers' own promises to account.

In its last analysis, the position now taken by the appellants for the first time in this case, and one which was never taken by their intestate during his lifetime, is that it was the duty of somebody after Edmonds' death to tell Moyers that if he succeeded in getting any money out of the claims Edmonds had turned over to him for prosecution, he would be required to account for it; and that as the appellee had been Edmonds' guardian before his death, and as he had become the administrator of his estate three years later, it was his, appellee's, duty during the three-year period, when there was no legal representative of Edmonds' estate, so to warn him. In other words, the claim of laches is predicated on what the appellee failed to do as an individual before his appointment as administrator, in which latter capacity he is here maintaining this suit. In effect, it is asked by the appellants that the creditors of Edmonds' estate be made to suffer for an alleged delay of a person who afterwards became the administrator, in failing, before he became such, to warn a person who might thereafter become a debtor of the estate that he would be called upon to account if he actually became a debtor.

The position of the appellants with respect to this claim of laches hardly comports with the position they took in the brief that they filed in the Court of Appeals in this case when it was in that court and was known as No. 1778. They then in their reply and supplemental brief, page 11, said:

> "It is insisted by appellee that Gilbert Moyers, as surviving partner, was trustee for the estate of his deceased partner. We have no controversy with appellee as to that being sound law, but we say that this proposition must be reasonably applied, and that its application to the case at bar means that Gilbert Moyers was trustee for Edmonds' estate to the extent of protecting the rights of Edmonds' estate in the partnership business."

The appellants also state in the same brief (p. 17):

> "Appellants, as defendants below, are perfectly willing to settle with complainant below in a fair and equitable manner, but they refuse to voluntarily make settlement upon inequitable terms such as have been heretofore laid down. Appellants admit that complainant below is entitled to a considerable sum of money, and are willing to pay him that money, but no more."

After having solemnly made this assertion and admission of trusteeship and indebtedness, upon which, presumably, the court below acted, we now have the appellants taking the stand here for the first time that the bill of complaint in this case should be dismissed absolutely for the alleged laches of the appellee, thereby depriving him of any right of recovery whatever. This stand is both too late and too bold.

There is no room to apply the doctrine of laches to the instant case; of this *McIntire vs. Pryor*, 173 U. S., 38, 53-59, from the District of Columbia, and the cases therein reviewed by the court, are conclusive. The aggressive lack

of good faith and fairness on the part of Moyers and his administrators is alone sufficient to estop them from setting up this midnight defense.

Conclusion.

We respectfully submit that on the merits the decree should be affirmed.

CHARLES COWLES TUCKER,
J. MILLER KENYON,
Solicitors for Appellee.

WASHINGTON, D. C., *October* 30, 1911.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1911.

Office Supreme Court U. S.
FILED
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JAMES H. McKENNEY,
Clerk.

No. 38.

CHARLES F. CONSAUL AND IDA M. MOYERS, Administrators of Gilbert Moyers, Deceased, *Appellants*,

vs.

HORACE S. CUMMINGS, Administrator of George B. Edmonds, Deceased, *Appellee*.

APPELLANTS' REPLY AND SUPPLEMENTAL BRIEF.

A. S. WORTHINGTON,
CHAS. F. CONSAUL,
IDA M. MOYERS.
Solicitors for Appellants.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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APPELLANTS' REPLY AND SUPPLEMENTAL BRIEF.

On November 2, 1911, appellants received the brief of appellee, and this brief will be in reply thereto, in addition to which some further suggestions are made with relation to the assignments of error incorporated in appellants' original brief.

REPLY.

On page 2 of appellee's brief it is alleged that appellants' statement of facts is incorrect in that it is alleged by appellants that the record shows this suit is being carried on by complainant for *his own sole use and benefit,* as a mere matter of speculation.

It is needless to say that we could not reasonably expect the appellee to come in and confess that his suit is speculative and unconscionable, but the record relieves complainant of any necessity of making such admission, as it proves the fact, and appellants rely, not on mere unsupported assertions, or upon a sentence taken from one place and another, but upon the record, made up, so far as this point is concerned, solely of the testimony of complainant himself (pages 30, 47, 50, 51 and 52, record), and the assignment from James B. Edmonds, next of kin, printed on page 53, record.

The fact commented upon in appellants' original brief can be gathered from the testimony of appellee himself, on only five pages, and the assignment in question speaks for itself.

It is true that appellee, when pressed on cross-examination, testified as follows (p. 50, record):

> "Q. If this suit shall be successful the entire proceeds will come to you?
> A. As administrator."

Of course that would be obvious, and the real question, which the appellee now seeks to obscure is *who* will benefit from the collection sought to be made by appellee as administrator. As to that point, let us see just what appellee himself testified, after several evasive answers whereby he sought to avoid making any admission of his being the sole

party in interest, and at the same time sought to avoid making any sworn admission which might later render him liable to an accounting at the demand of the decedent's next of kin.

From page 51, record, the following is quoted:

"Q. Has Mr. James B. Edmonds any right to claim anything from you from the proceeds of this suit?

A. Has he a right to?

Q. Yes.

A. I expect he has, as an heir at law.

Q. Was not that assignment made with the understanding that no further claim would be made upon you by Mr. J. B. Edmonds, and that anything that might come from these claims would inure to your benefit?

A. We had no understanding at all in regard to anything except that I was to clean up whatever George's estate might be, if there were any outstanding debts or claims. I do not know whether that understanding was in or not but I made that reservation myself.

Q. Was that incorporated in the agreement?

A. No, sir.

Q. Then it was a mental reservation with yourself, if there was any reservation?

A. No, sir; because I told him plainly that there were certain things that I wanted to have settled up. In the first place there was an amount that I thought should be paid to the people who took care of him during his last illness; and the next thing, I wanted to have the lot in the cemetery at Fairfax fixed up in shape, as I thought it should be, and then I understood that there is a doctor's bill over there still outstanding. That was to be paid.

Q. Were you not personally liable for this doctor's bill?

A. No, sir.

Q. Were you not responsible to the people who had cared for him in his last illness, of whom you have spoken?

A. No, sir.

Q. Who are those people?

A. A man named Charles Taylor.

Q. Has he proven any claim against the estate?

A. He has not.

Q. Then you would regard anything you would pay him as a gratuity?

A. In one sense I should, for I think he ought to have it.

Q. *Except then for such things as you might choose to pay, it is your expectation that you will keep the proceeds of the suit?*

A. *That is to be settled between Mr. Edmonds and myself.*

Q. The assignment in its terms was a complete assignment of all interests?

A. It was given as a complete assignment for the purpose of being able to make a complete settlement.

Q. Is that stated on its face?

A. No, sir.

Q. And according to its terms it is a complete assignment to you of all interest in that estate?

A. Simply because no other assignment would enable me, in my opinion, to have made a complete settlement."

Page 52, record.

"Q. But that is the fact, that it is a complete assignment on its face.

A. Yes, sir; it was a complete assignment on the face of it."

In connection with the testimony quoted, should also be read the testimony of complainant, page 50, record, as follows:

"Q. Prior to that assignment George B. Edmonds was indebted to you, was he not?

A. He was indebted to me in a small amount.

Q. How much was it?

A. I could not tell. I would say perhaps several hundred dollars. I have been his guardian.

Q. *Did he leave any other debts?*

A. *None that I know of.*

In connection with this testimony, we here print in full the assignment from the next of kin, found on page 53, record, which paper was secured by appellants only after the making of several efforts and demands:

ASSIGNMENT FROM NEXT OF KIN.

"Know all men by these presents, that I, James B. Edmonds, of Washington, District of Columbia, the next of kin and sole heir at law of George B. Edmonds, deceased, in consideration of one dollar to me in hand paid, do hereby sell, assign and transfer all my right, title and interest in the personal estate of the said George B. Edmonds, to Horace S. Cummings of the city of Washington, aforesaid, to have and hold the same for his use and behoof forever.

In witness whereof I set my hand and seal this 5th day of May, 1899.

JAS. B. EDMONDS."

Witness:

LYDIA M. EDMONDS.

(See p. 53, record.)

Now, reading the evasive, equivocating testimony of appellee, above quoted, in connection with the assignment quoted, we ask *how* any demand by the present heirs or next of kin of George B. Edmonds could be maintained against the appellee, in event he should collect anything in this suit? The complainant evidently attempted to steer between Scylla and Charybdis in giving his testimony; he feared the effect on this suit of admitting himself to be the sole present party in interest, and sought to avoid making such an admission. He feared the effect of denial, on

the other hand, in that it might later render ineffective the assignment secured from James B. Edmonds, the next of kin, who is now deceased.

If complainant were acting *merely* as administrator, and for the benefit of the next of kin, would he not have *so stated* when pressed for the facts of the matter? There is only one reasonable inference to be drawn from his testimony, and that is, that he intended and has continuously intended, to avail himself of that absolute assignment, at its full face value. We challenge appellee to point to anything in the record which even tends to negative complainant's absolute reliance on that assignment.

If that assignment means what it says, then is not complainant (appellee) the sole party in interest? Is the suit not a speculative one in every respect?

Further, in view of Cummings' own quoted testimony that there are *no debts* owing by Edmonds' estate, save to *himself*, the plea of appellee, on page 45, of his brief, that appellants ask—

> "that the creditors of Edmonds' estate be made to suffer for an alleged delay of a person who afterwards became the administrator, in failing, before he became such, to warn a person who might thereafter become a debtor of the estate that he would be called upon to account if he actually became a debtor."

while intended to appeal to the court in behalf of the poor "*creditors*," is obviously for the sole benefit of complainant, *personally, and individually*, for which reason it should have no weight.

It is stated on page 3 of appellee's brief that this matter is not open to appellants, as it no wise concerns them, but is one exclusively between the appellee and his intestate's next of kin. With this statement we cannot agree, for if

the facts show the suit to be speculative in its nature, if they show the demand made to be unconscionable and devoid of equity, then it is plainly within the right of this court to apply to this case the principle of equity that a chancellor will not aid in the establishment of an unconscionable demand. This phase of the case cannot be brushed aside by appellee with a wave of the hand; it is too important to be dismissed in that manner.

On page 3 of appellee's brief, it is argued that Moyers had constructive knowledge of Edmonds' adjudged insanity, if not actual knowledge thereof, and that aside from his being adjudged insane, the proof shows him to have been insane.

Be that as it may, it has been admitted that for a long time after he was judicially declared *non compos*, he went about transacting business for himself, and that this is correct further appears from page 162 of the record, where are set forth *three paid checks*, given by Moyers to Edmonds, and dated respectively December 5, 1891, December 10, 1891, and January 16, 1892, *all nearly a year after Edmonds' adjudged insanity*. Assuredly Moyers would not have been giving bank checks to one whom he knew to be incapable of transacting business, nor would the checks have been paid had they been presented by one deemed so incapable.

On pages 4 *et seq.*, of appellee's brief is set forth a further denial of the correctness of our statement of facts, but this denial falls short of really contradicting any *fact* set forth by appellants. In view of what has been previously decided, appellants have not stated that Moyers *did* purchase all Edmonds' rights in the partnership business but what we *did* state was that

> "It further appears that after Edmonds had been adjudged insane, and also after the payment by Moyers to Edmonds of a total of about $900.00, Moyers *attempted* to purchase from Edmonds all Edmonds' interest in the claims covered by the partnership agreement, and pursuant to said *attempt*, actually paid Edmonds the sum of $500.00 in one payment."

That the payment of $500.00 was actually made, August 1, 1892, has been found as a *fact*, by the auditor, and by the courts below, and as appellee never appealed from that adjudication of this fact, he cannot now deny the *fact*, whatever he may urge as to its probative *effect*.

If, in view of conditions and circumstances, the court believes that such a large payment would *not* have been made *save* in the attempt to purchase outright Edmonds' interest, then the probative effect of the fact of payment may be great.

It must be admitted, and is admitted, that up to the date of said single large payment, only one claim alleged to belong to the partnership, had been actually collected (Merrill case), and the total fee in that case was only $407.50 (Auditor's report, p. 212, record). If Edmonds were to be given half that fee, eliminating from consideration the sum of $970.00 previously advanced to him by Moyers, his share of that fee would have been only half of $407.50, or $203.75, which shows Moyers could not have paid Edmonds $500.00 in settlement of *that* claim.

The small value actually possessed at that period, or about that time, by these war claims, even after allowance by the Court of Claims, appears from the testimony of G. W. Z. Black (pages 185, 186, record) showing that in 1890, he purchased at the earnest solicitation of Edmonds, the fee of Edmonds in a case previously allowed for over $4,000.00, the fee amounting to about *$2,200.00*, and that

he paid Edmonds therefor, either the sum of *$200.00* or *$400.00*. That transaction between Edmonds and Black shows how improbable it is that Moyers should have paid Edmonds $500.00 merely as a further advance on claims the value of which was then wholly problematical, dependent both on the findings still to be made by the Court of Claims, and then further dependent on the action of Congress.

We do not say that Moyers *did* purchase Edmonds' interest, but we insist that he did *attempt* to make such purchase, and his payment of the large sum of $500.00 at one time, and in view of surrounding conditions cannot be explained on any other theory.

The incorporation on page 7 of appellee's brief, of a supposed excerpt of something said by the trial judge would seem wholly improper, that not being in the record, and there being no means of either proving or disproving the correctness of the supposed quotation, but, be that as it may, its *incorrectness* is established by the testimony of Cummings himself and of his attorney, Mr. Butterfield, who show that the *first* demand made on Moyers was made in *June, 1899*, while in the supposed quotation it is stated that:

> "From the time of Edmonds' death there had been constant effort on the part of Cummings, as administrator, to secure a settlement of these unsettled accounts * * *."

As Edmonds died in *1896* (p. 26, record), and as Cummings was not appointed administrator until August 22, *1899* (p. 2, record, Par. 3, Bill), it is obviously impossible that the above quoted statement could be correct.

The quotation, page 8, appellee's brief, from the opinion of the Court of Appeals, merely serves to accentuate the

other point made by appellants, *i. e.*, the utter injustice, after lapse of so many years, of compelling Moyers to make proof of facts material to his rights in the premises.

Again, on page 8 of his brief, we find a reiteration by appellee that appellants are contending, in face of the decisions, that Moyers *"purchased"* Edmonds' interest, where in fact we have *never* made that assertion at all.

On page 9 of his brief, appellee sets forth a statement made below by appellants to the effect that appellants did not controvert the fact that as surviving partner Moyers was trustee for his deecased partner's estate, but it must be borne in mind that the argument then presented by appellants to the Court of Appeals had to be framed with a due regard to what had been previously decided in the case *by that court*, in order to secure any hearing at all.

As to the other quoted statement from a previous brief filed below by appellants, to the effect that appellants admitted that complainant was entitled to a considerable sum which appellants were willing to pay him, the same thought and same statement applies, *i. e.*, that *in view* of the previous decisions of the Court of Appeals, appellants must admit that complainant was entitled to something. It has always been contended by appellants that the entire demand was unconscionable and wholly devoid of equity or real justice or merit.

AS TO APPELLEE'S MOTION TO DISMISS.

Appellee's brief, from top of page 10 to top of page 25, relates solely to his motion to dismiss appellants' appeal for lack of assignments of error. That matter has been quite fully covered in appellants' brief filed in opposition to the motion.

In an equity cause, extending over a long period, wherein exceptions to the auditor's reports have been repeatedly

upheld, wherein final decrees of the trial court have been modified and the cause remanded for further reference to the auditor, errors cannot be specified with the same precision as in a law suit, where exceptions are reserved by a bill of exceptions. In fact, the decree of the Court of Appeals from which this appeal is taken, does not in and of itself, show anything but a formal affirmance, the opinions and reasoning of the Court of Appeals being contained in the previous decisions. That is set forth in our statement of the case, preliminary to the assignment of errors, and argument thereon.

The first error complained of is what may be termed a *continuing* error, finding a place in *every* report of the auditor, and in *every* decree or order entered during the past ten years or so.

Detailed examination of the record is not required for the determination of the errors assigned, but the appeal in an equity cause necessarily brings before the appellate court the entire record from the court below. Appellants are not asking this court to incur the labor of reading over 700 pages of testimony and exhibits.

ARGUMENT ON MERITS.

First Assignment.

Without indulging in any hair-splitting, appellants have endeavored to the best of their ability to so present the case to this court as to secure an adjudication on the real merits of the controversy, in the light of established principles of equity jurisprudence, and they feel confident that this court will consider the case for the purpose of arriving at a conclusion which will be strictly in accord with those principles and which will render even-handed justice to all parties. That is all appellants have ever asked.

This assignment of error relates to failure of the courts below to apply to this case the principle that, under the law of partnership, the utmost measure of recovery by appellee herein is half the reasonable value of partnership services rendered prior to *dissolution*.

It appears on page 444 of record, that appellants' decedent offered to prove the value of services rendered by Moyers subsequent to the dissolution, and to show the services rendered by the partnership prior to dissolution, it being there stated that the offer was made on the theory that Edmonds' estate would be entitled to a share on the *quantum meruit* of services rendered prior to dissolution. To that offer the objection of complainant was sustained.

Exceptions Nos. 21 and 22 (pages 470, 471, record) were taken to the rejection of that evidence, and appellants have all along contended before the Court of Appeals on the same theory.

Under the practice prevailing in the Court of Appeals, assignments of error are not incorporated in the transcript from the court below, but are made only in briefs, for which reason the record here does not set forth all the assignments relied upon, by either side, either on appeals or cross-appeals. However, the Court of Appeals, in its opinion of May 24, 1904 (pages 388-395, record), referred to one of the assignments of error before it as being based on failure of the court below to allow Movers credit or compensation for services rendered—obviously after dissolution of the special-partnership.

Of course, in an equity case, and especially on an involved partnership accounting, it became necessary for the auditor to rule repeatedly on various points of law, and it could not be expected that a bill of exceptions should be brought here on an appeal.

Aside from this, however, this court expressly reserves

the right to consider and pass upon any *"plain error,"* as this error was assigned in the Court of Appeals, and as it has been again here assigned, it is submitted that it is clearly within the power of this court to consider the same.

In considering this first assignment, appellants in their original brief relied principally on the dissolution of the partnership occurring at the death of Edmonds, in 1896, but further examination of the authorities convinces appellants that the date of Edmonds' *adjudged insanity* should be taken as marking the dissolution of the special-partnership.

EFFECT OF EDMONDS' ADJUDGED INSANITY.

At the outset counsel will state that it is acknowledged that the weight of authority is to the effect that insanity of a partner does not *ipso facto* terminate an ordinary commercial partnership. That we concede.

It seems, however, that an *adjudication* of insanity of a partner, and the appointment of a guardian or committee, especially in case of a *professional* partnership, works a dissolution of the partnership.

As has been noted, most adjudicated cases involving the law of partnership relate to ordinary *commercial* partnerships, in which each partner contributes, usually, two things:

1. Services.
2. Capital.

From the authorities cited in appellants' original brief, it is seen that the partner who *continues* the partnership business, is allowed extra compensation for his services, the theory being that the estate of a deceased partner shall continue to participate in partnership revenues to the extent of the *capital* remaining in the business.

In an ordinary professional partnership, however, and especially in the special partnership of Moyers and Ed-

monds, the *adjudged insanity* of Edmonds operated, under the well recognized law of *agency*, to do three things, to-wit:

First.—His adjudged insanity abrogated all Edmonds' contracts with claimants, and all powers of attorney held by him.

Second.—It operated to remove from the special partnership, therefore, both his contribution or capital represented by his control of claims or business, and also made it impossible for him to longer render personal services in the partnership business.

Third.—It annulled Edmonds authority as agent or attorney for the claimants, and hence necessarily annulled the authority of Moyers as *subagent*, thereby *dissolving the partnership* relation just as effectually and just as necessarily as though by death of Edmonds, or as by one partner accepting a judicial position, which precluded him from practicing law, as exemplified in Justice vs. Lairy, 19 Ind. App., 272, cited on p. 13, appellants' original brief.

In support of this contention we refer to the following authorities:

From Parsons on Partnership, we quote the following:

> "Sec. 362. *Insanity does not operate of itself to dissolve.* There is one other question which, although it bears somewhat on the other causes enumerated, is far more important in its reference to insanity; and that is, whether the insanity—supposing it to be certain, complete, and incurable—*of itself* terminates the partnership, or is only good cause for a decree of dissolution. The question might come up in this form: A partner is taken to-day with insanity, which is soon found to be hopeless and entire. Next week, or month, before lawfully appointed guardians have obtained, or could have obtained, a decree of dissolution, his part-

ners, because they are deprived of his sagacity, or relieved from his control, rush into mad or even fraudulent speculations, and not only lose all the property of the firm, but bring upon it an insolvency which requires all the insane man's private property to pay. He is not liable for these debts if his insanity terminated the partnership; and, we should say, he would not then be liable even, without notice, on the same grounds on which notice is not needed where the dissolution is by death, but, if his insanity did not terminate his partnership, he or his property are liable to all innocent parties for all debts contracted before the decree.

This question has been somewhat considered. There are not wanting strong reasons and high authority for the conclusion, that insanity, certain, complete, and hopeless, of itself and at once dissolves the partnership. But, we think, the decided weight of authority, in England and in this country, opposes this conclusion, and holds that the partnership continues until it is dissolved by decree.

Sec. 363. *Judicial Determination of Insanity.* There is one exception which the courts might allow. If the insanity were determined by due inquest, under process of law, and due public notice were given, this might be held to operate a dissolution as effectually as death, and with many of the incidents of a dissolution by death. It is true that, in such case, in this country, a guardian would probably be at once appointed, and this appointment would, as we have seen, effect dissolution. * * *"

That the distinction between professional partnerships and those formed for commercial purposes is not a matter of mere recent recognition appears from the English case of Farr vs. Pearce, 3 Maddock's Chancery Report, 74. 78. In that case two surgeons were partners. One died, and soon thereafter the surviving partner sold the practice for a considerable sum.

The administrator of the deceased partner demanded a

share of the amount realized from the sale mentioned, and the court (Vice-Chancellor) said (italics being ours):

> "* * * , I think it would have been difficult to maintain that where a partnership is formed between professional persons, as surgeons, and one dies, the other is obliged to give up his business, and sell the connection for the joint benefit of himself and the estate of his deceased partner. When such partnerships determine, unless there be stipulations to the contrary, each must be at liberty to continue his own exertions; and where the determination is by death of one, the right of the survivor cannot be affected. *Such partnerships are very different from commercial partnerships.*"

From Parsons on Contracts, Book I., marginal page 198, we quote the following, relative to the matter of dissolution of partnership by insanity of one of the partners, even without a decree of dissolution:

> "And we think with Mr. Justice Story and Mr. Chief Justice Parker, that it may well be doubted whether the rule of law should not be that absolute insanity or any equivalent disability, operates at once, and *ipso facto*, a dissolution."

It would assuredly appear that appellants, in contending for the application to the present case of principles enunciated by such eminent jurists and lawyers as Justice Story, Parsons and others cited, are in most respectable company, at any rate, when they contend that Edmonds' *adjudged insanity* had the effect of dissolving the special partnership between Moyers and Edmonds.

Weeks on Attorneys at Law, Sec. 256, reads as follows:

"*Death of Attorney or Client.*—The relation is also totally dissolved by the death of the client, and by the death or absolute and permanent incapacity of the attorney, as in the case of insanity and disbarring. * * *"

From Sec. 246 of the same work, we quote the following:

"An attorney who becomes disqualified to act cannot complete the performance of his subsisting professional engagements by means of a substitute, though his clients assent to the substitution; because, what a person cannot in law do by himself, he cannot do by another.

Citing Ratcliff vs. Baird, 14 Tex. 43."

On p. 505 of the same work is found the following:

"By the death of an attorney, the power of his substitute necessarily ceases."

In case of Isler vs. Baker, 6 Humph. (25 Tenn.) 85, Joseph H. Bryan and Henry H. Bryan, were commercial partners and bought goods. After Joseph H. Bryan had been adjudged insane, Henry H. Bryan gave a note in payment for goods previously bought, signing the note "Henry H. Bryan and Company." Suit was brought against Isler, administrator of the insane partner, who had later died. The court said:

"Upon the trial it was contended for Isler, the administrator of Joseph H. Bryan, that the partnership previously existing between him and Henry H. Bryan was dissolved by the commission of lunacy found against Joseph H. Bryan; and that, therefore, Henry H. Bryan had no power or authority to bind him by the note executed as before stated, and so it was held

by the circuit judge, and, as we think, correctly; for both upon principle and authority, the inquisition of lunacy, as found, did dissolve the partnership, *ipso facto,* and Henry H. Bryan, at the time he executed the note, could only bind himself thereby."

Story on Agency, Sec. 487 (9th Ed.), reads as follows:

"The case of the insanity of the agent would seem to constitute a natural, nay, a necessary, revocation of his authority; for the principal cannot be presumed to intend, that acts done for him and to bind him, shall be done by one who is incompetent to understand, or to transact, the business which he is employed to execute. The exercise of sound judgment and discretion would seem to be required, in all such cases, as preliminaries to the due execution of the authority."

Mechem on Agency, under the title *"Termination of the Relation,"* says:

"Sec. 258. *By insanity of the Agent.*
In general the proper exercise of an authority conferred implies in every case the exercise of more or less intelligence upon the part of the agent, and the subsequent loss of that intelligence by the agent renders the proper performance of his duty thereafter impossible. This is especially true where the agent was selected for his mental capacity or endowments, as in case of an attorney, architect or author."

Sec. 262 of the same work contains the following statement, in treating the matter of insanity of the agent:

"Effect on Subagent.
The termination of the agent's authority would also bring to an end the authority of the substitutes and subagents who derived their powers from him."

In Clark and Skyles on Agency, Sec. 188 (a), under head of *"Termination of the Agency,"* it is said:

> *"By insanity of the Agent.*
> *General rule.*—The insanity of the agent also constitutes a natural termination of the agency, for it cannot be presumed that the principal intends one to act for him and to bind him when that one is incompetent to understand or to transact the business for which he was employed. Especially is this true where the agent is one selected for his mental abilities, as where performance of his duties require the exercise of skill, judgment and discretion."

The following is quoted from Sec. 188 (d), of the same work:

> *"As to Subagents.*—Whether or not the insanity of an agent terminating his authority, also terminates the authority of a subagent, depends on whether the latter is the agent of the primary agent or of the principal. If he is appointed by the agent with or without the authority of the principal, and derives his authority wholly from the primary agent, then the latter's insanity also terminates such subagent's authority."

As to the matter of the employment of Edmonds by various claimants, and referring to the contention of appellee that the relationship between Moyers and Edmonds was one of ***employment*** of Moyers, and that Moyers was therefore bound to continue the work after Edmonds' death, we call attention to the fact, obvious on face of the record, that the employment was that of *Edmonds*, and *not* of *Moyers and Edmonds*, either jointly or jointly and severally.

On this point, we refer to the decision in case of Baxter vs. Billings *et al.*, 28 C. C. A., 85; 83 Fed. Rep. 790.

In that case Billings and Cavner deemed themselves en-

titled to a share in a certain mine. They entered into an agreement with two lawyers named Baxter and Yonley, whereby the lawyers undertook to secure their demand, it being agreed that if they succeeded without suit, the lawyers were to have 20% of recovery for their fee, but if suit were necessary, then the attorney fee should be 50% of whatever might be secured.

Baxter and Yonley attempted to secure a settlement without suit, but failed. Then Yonley died. Thereafter Baxter, *with the knowledge and assent of the clients,* associated other counsel with him, brought suit, and recovered an interest in the mine for Margaret Billings, as also a large sum of money.

In order to protect his fee, Baxter then brought suit to have a lien declared on the recovery, there evidently being a controversy between him and his client as to matter of fee.

The Circuit Court of Appeals held that Baxter's fee must be determined by its reasonable value, and *not* by the terms of the original contract, which was absolutely abrogated by death of Yonley, and used the following language:

> "If, in the case at bar, Margaret Billings and Margaret Cavner had made their contract of June 23, 1887, with Yonley alone, who died in January, 1888, before the successful suit was instituted, it is clear that there could have been no recovery of the compensation stipulated by that contract, either by Baxter or by any other substitute or successor of Yonley, however successful he might have been in its prosecution, because the services contracted for—the services of Yonley—were not rendered. The same fatal objection presents its protest to the actual contract. Under that agreement their authority to commence and prosecute the suit was a joint authority, and their duty was a joint duty. A joint authority conferred on two persons can only be exercised by the act of both.

An obligation to furnish and apply to the conduct of a lawsuit the learning, ability and experience of two particular attorneys is not performed by furnishing the services of one of them, although the services of many others of equal or superior ability are also furnished. When one agrees to pay a certain compensation for the services in a specified matter of two or more attorneys or agents whom he selects or names, that contract is not performed, and that compensation cannot be recovered, when any one of them dies, or abandons the agreement, before it is substantially performed, because the services of that one have not been furnished. McGill's Creditors vs. McGill's Adm'r, 2 Metc. (Ky.) 258, 260; Morgan vs. Roberts, 38 Ill. 65, 85; Moshier vs. Kitchell, 87 Ill. 18, 21; Wright vs. McCampbell, 75 Tex. 644, 648, 13 S. W. 293; Martine vs. Society, 53 N. Y. 339, 342; Salisbury vs. Brisbane, 61 N. Y. 617; Ins. Co. vs. Wilcox, 57 Ill. 180, 186.

The result is that the death of Yonley in January, 1888, is a complete bar to the claim of the appellant to recover, under the contract of June 23, 1887, one-half of the proceeds of the suit instituted in April, 1888."

Applying the above-stated principles to the case at bar, it would seem plain:

1. Edmonds' contracts with the claimants were abrogated by his insanity, adjudged in January, 1891.

2. Had Moyers attempted to recover a fee from any claimant, basing his demand on Edmonds' contract with the claimant, he would have failed.

3. Hence, if Moyers could not protect himself or the previously existing special partnership by or under Edmonds' fee agreements, it follows that any collection of a fee by Moyers from a claimant must have been based on a new and independent employment of *Moyers* by the claimant.

4. It would seem to further follow, therefore, that Edmonds' administrator could recover from Moyers, only one-half the amount earned by Edmonds and Moyers prior to Edmonds' becoming incapacitated by his adjudged insanity. Surely Edmonds' estate could have no greater rights against Moyer's than Moyer's could have against the claimants.

Stated somewhat differently, as the adjudged insanity of Edmonds obviously revoked the powers of attorney held by him from claimants, and as insanity rendered it impossible for him to longer contribute any services, his contribution to the partnership was at an end, and the authority of his associate Moyers was also revoked under the principles of agency above noted. Hence, from the date of Edmonds' adjudged insanity, there was no longer any subject matter to come within the scope of the special-partnership agreement.

This necessarily dissolved the partnership just as much as would be the case if two painters entered into a special partnership to paint a certain ship, and before the work was done, the ship took fire and was totally destroyed.

On pages 539, 540, of the record, is a list of *49* claims wherein Edmonds apparently held powers of attorney and agreements, which were actually prosecuted by other lawyers, strangers to this suit, thus showing that claimants exercised their right to place their cases wherever they chose, regardless of the extinguished authorizations given to Edmonds.

The case of Clifton vs. Clark, 83 Miss., 446, relied upon by the appellee, was not a suit between partners, but the suit was between a *client* and the estate of a deceased partner. The estate sued to recover a fee alleged to be due the former partnership.

In that case the surviving partner was actually employed by the client, after dissolution of the partnership by death

of the senior partner, the further or continuing employment being at a less compensation than that originally agreed upon. The surviving partner concluded the litigation successfully, and it was held that the client must pay the fee originally agreed upon.

While it is true that the court held that the surviving partner of a firm must carry out the firm contracts even after death of his partner, the court coupled with that holding the following statements:

> "With the possible limitation that they might be entitled to some additional compensation from the estate of the deceased partner for services rendered in winding up unfinished business, we see no reason why the general rule applicable to commercial partnerships should not apply to surviving partners of firms of attorneys.
> * * * * * * * * *
> It may be that the surviving partner might have an equitable claim for a larger share of the compensation received for his services rendered after the death of his partner, but that question we are not called upon now to decide, * * *."

It will be noted that without directly passing upon the point of law raised in our first assignment of error, the Supreme Court of Mississippi concurring in what was said by this court in Denver vs. Roane, on the same subject, *suggests*, at least, the existence of the very principle for the application of which appellants here contend.

Instead of supporting the position of appellee, therefore, the Clifton-Clark case tends to uphold the correctness of the position of appellants. We again call attention, however, to the distinction before pointed out, that in the Clifton-Clark case, a regular *firm* of general practitioners was expressly employed, while on complainant's own showing

in the case at bar, *Edmonds* was *solely* employed by the clients, so that of necessity, any conection of Moyers with a claim, after Edmonds' death, must have been under an independent employment *of* Moyers.

In his analysis of the case of Denver vs. Roane (99 U. S., 355), on page 29 of appellee's brief, the appellee's statement of what he terms the second point involved in that case is entirely erroneous and misleading as we read that case. This court, in that case did *not* decide as a principle of law that the general rule of commercial partnership that a surviving partner was entitled to no extra compensation for winding up the business unless otherwise stipulated, applies to partnerships between attorneys. On the contrary, what this court decided was that, under the express terms of the agreement between the partners in that case, the continuing or surviving partner could not claim extra compensation for services in concluding the firm business, and then followed that holding with the following statement:

> "There may possibly be some reason for applying a different rule to a case of winding up partnerships between lawyers and other professional men, where the profits of the firm are the result solely of professional skill and labor."

These words of this court are entirely inconsistent with the statement made by appellee regarding that decision.

The case of Little v. Caldwell, 101 Cal., 560, cited on page 29 of appellee's brief, is analyzed on page 29 of our original brief, and that case is clearly distinguishable from the case at bar in that *both Little and Caldwell* had been employed by clients, while in the case at bar the only employment whereby any case was brought within the special-

partnership was an employment of *Edmonds, individually,* which terminated with *his adjudged insanity.*

In the case of Osment vs. McElrath, 68 Cal., 471, cited on page 29 of appellee's brief, it is true that the widow of the deceased partner was allowed a share of the fees actually collected after dissolution of the professional partnership by death of her husband, but, as pointed out on pages 27, 28 of our original brief, there the total fees collected amounted to $7,000.00, and the surviving partner was allowed $2,000.00 for his individual services rendered after dissolution, so that the surviving partner there took $4,500.00, and the estate of the deceased partner took only $2,500.00. That case is relied upon by appellants as supporting their first assignment.

Other cases cited by appellee on pages 29, 30 and 31 of his brief will not be found to in any way controvert the correctness of the appellants' position on this assignment of error.

Replying briefly to the argument found on page 33 of appellee's brief, it suffices to say that:

> "1. Edmonds' powers of attorney and his fee contracts were all abrogated by his insanity, as shown by authorities herein cited, and would have been annulled by his death even had he not been insane.
>
> 2. Moyers was *not a party* to any of those powers of attorney or contracts, and so could take or hold no rights thereunder.
>
> 3. In prosecuting claims *after* abrogation of Edmonds' authorizations, Moyers assuredly was acting in some capacity. *What was that capacity?"*

Was he acting as attorney for claimants under Edmonds' authorizations? That was legally impossible for they no longer existed. Was he acting as employee or agent of Edmonds? That was legally impossible, as under the law

of principal and attorney or principal and agent, his authority from Edmonds died when Edmonds' authority died.

The only remaining theory is that he was acting under independent and direct authorization from the claimants themselves, just as numerous other lawyers are shown to have acted, and *if so,* if Edmonds' administrator can take anything in the fees so earned and thereafter collected, then that share cannot be more than half the reasonable value of partnership services rendered prior to dissolution of the partnership by Edmonds' adjudged insanity. In short, if after Edmonds' insanity and death, the well known standing of Moyers as a successful practitioner, so recommended him to claimants who had before employed Edmonds, that they saw fit to employ Moyers in preference to other lawyers, that was Moyers' good fortune, and assuredly that good fortune was not an asset of Edmonds' estate.

The *attempted* purchase by Moyers of Edmonds' interest in the business is a sufficient reply to the statement on page 33 of appellee's brief that Moyers lost nothing by Edmonds' death, when coupled with the suggestion that by Edmonds' insanity and death, Moyers necessarily lost all right to claim anything under Edmonds' authorizations and contracts.

The matter of retention of Edmonds' papers by himself and by his committee, made subject of argument on pages 33, 34, 35, of appellee's brief seems to logically fall under a discussion of the third assignment (Laches) rather than under the present head.

The citations found on pages 36 *et seq.*, of appellee's brief, as to the law of partnership, are already fully covered either by what has been previously stated in this brief, or in appellants' original brief.

SECOND ASSIGNMENT.

INTEREST.

It is argued by appellee that the matter of allowance of interest was not assigned in error below, and that appellants are estopped to raise this point now as they once claimed before the Court of Appeals in 1904 that interest should be allowed Moyers on his advances made to Edmonds.

Aside from the right reserved to this court by its rules, to consider any "plain error," it is submitted by appellants that their position on their first appeal taken to the Court of Appeals soon after the death of their decedent in 1903, was merely this:

> "That *if* interest was to be allowed to complainant, then the same rule should be applied in favor of the defendant."

The error here complained of is assuredly a "*plain*" one, appearing on the face of the decrees. It was raised by exception to the auditor's report (721, record), and was raised by assignment of error X., in the last appeal to the Court of Appeals.

Apropos of this assignment of error, it may not be amiss to here quote from the brief filed in the Court of Appeals by counsel for *appellee* (*Cummings*), as follows:

> "As a general rule, interest is not allowed upon partnership accounts until after a balance is struck on a settlement between the partners, unless the parties have otherwise agreed or acted in their partnership concerns. Until a balance is struck *there is no duty to*

pay over the money, and therefore a charge of interest as damages cannot be justified.

Gilman vs. Vaughan, 44 Wis., 649.
Dexter vs. Arnold, 3 Mason, 284.
Lea vs. Lashbrook, 8 Dana, 214.
Day vs. Lockwood, 24 Conn., 185.
Desha vs. Smith, 20 Ala., 747.
Whitcomb vs. Converse, 119 Mass., 38.
Beacham vs. Eckford, 2 Sandf., Ch. 116."

It is very apparent from the above quoted portion of appellee's brief filed in the Court of Appeals, that at the present time appellants are in entire accord with appellee on the point of interest—that is—on the general principle of law involved in this assignment of error.

As this quotation from appellee's brief below shows appellants' present position to be correct, it is submitted that denial of the general principle of law and equity by appellee comes with very poor grace. *If* the *appellee* was correct in *his* statement of the law in the Court of Appeals, then *appellants* must be equally correct when they state the *same* principle of law in *this* court.

In event this court should deem complainant entitled to anything regardless of his laches and of the obviously speculative character of his suit, then this matter of interest will be one of great importance to the appellants, as it will make a difference in final settlement, of approximately $5,000.00 to $6,000.00.

THIRD ASSIGNMENT.

LACHES.

It is contended by appellee that the assignment of error based on the laches of appellee (complainant) should not be now considered because this point was not raised below, but with this statement of fact we take issue.

It is true that on the first appeal to the Court of Appeals, this point was not stated in precisely the present words, but the *principle* involved was invoked, as will plainly appear by reference to the opinion of the Court of Appeals, rendered May 24, 1904 (pp. 388, 391, 392, record). It will be noted from that opinion that the point there raised and there considered by the Court of Appeals was whether or not Cummings, as committee of Edmonds, by his inaction and silence, abandoned the special partnership. It is submitted that, in reason, that is merely the statement in a slightly different form, of the ground of the present third assignment of error, relating to the effect of the laches of Cummings, which laches consisted of the very inaction of which complaint was made nearly eight years ago.

Further, in the last appeal to the Court of Appeals, this point was expressly assigned as error, being Assignment XII, reading as follows:

XII.

> "It was error not to hold that complainant herein was guilty of such gross laches as to preclude his right to recover in this suit, he having delayed making any demand upon Gilbert Movers for any accounting until about eight years after complainant's decedent, George B. Edmonds, had been declared insane, and having made no such demand until about three years after the death of his decedent, although between 1891 and 1896, complainant was the committee of Edmonds, in possession of his books and papers."

Evidently, this assignment did not strike the Court of Appeals as of any force, however, as the decree of the trial court was made the subject of a merely formal affirmance.

That Cummings knew all about the special-partnership agreement is shown by his own testimony (p. 176, record).

He says that he was informed by James B. Edmonds, brother of the insane person, that none of the claims had been paid, *but he made no inquiry of Moyers,* the very man who would be able to tell him with certainty, and to whom he must look for an accounting, nor does it appear that he examined the appropriation act to learn whether any claims therein were on the list of claims now alleged by complainant to be partnership claims.

It seems to appellants that Cummings had a *motive* for avoiding any conference with Moyers on the subject; otherwise the most natural thing in the world, under the circumstances, living in the same city as they were, would have been for Cummings to advise Moyers that Edmonds had been adjudged insane; that Cummings was duly appointed committee; that any payments should be made to him of funds becoming payable to the *non compos.*

It is to be borne in mind, and we ask that the court do not lose sight of the fact that, while the Act of March 3, 1891, made appropriation for payment of the Merrill claim, yet it was not paid until the following year, owing to delays in the Departments. Cummings was appointed committee *January 31, 1891,* several weeks before the enactment of that appropriation bill, but Cummings made no effort to ask any accounting then. The claim was actually collected by Moyers and the fee realized upon, in 1892. (See Treasury warrant, p. 13, record, dated Jan. 5, 1892.)

Further, *Cummings himself* has put in evidence a memorandum, dated in *July, 1891,* calling attention to the making of an appropriation for the payment of this claim, in the sum of $815.00 (p. 374, record).

Now all these papers placed in evidence by complainant, on that record page and preceding pages, are shown to have been legally in possession of Cummings, as committee

of Edmonds, from *January 31, 1891.* Yet in face of his possession of this and other papers mentioned, he says he did not know that any appropriation had been made for payment of any of the claims. If he did not know, *whose fault was it* that he did not? Was it Moyers' fault? Obviously not. *If* Cummings did not know that appropriation had been made for payment of the Merrill claim, it was because, as was said by this court of this *same complainant,* in the case of Baker vs. Cummings,

"Knowing he did not believe."

It may be contended by the appellee that Cummings did not have actual knowledge of the papers contained among Edmonds' effects, until *1899,* as Cummings testified that he had never seen these office jackets of Edmonds until 1899, when he examined them for the *first* time (p. 28, record).

Here, again, we have presented a glaring example either of deliberate ignorance of facts shown by papers legally within Cummings' custody, *or* an absolute indifference on the part of Cummings to the interests or rights of the man of whom he was guardian.

On any such facts can complainant relieve himself of the charge of gross laches? He either did not *care* to know what the facts were, until he had made *himself* the sole party in interest, or else, knowing them, he was indifferent until he had secured the assignment from the decedent's next of kin.

It is maintained by appellants that the appropriation for payment of the Merrill claim in 1891, and its actual payment, in 1892, mark dates, from one of which the legal right of Cummings, as committee of Edmonds, to ask an accounting—to make demand on Moyers—began to run.

The force of this contention is realized by appellee, and in his brief he seeks to avoid it by saying that, as Cummings did not know of payment of the Merrill claim, even when he filed his bill in *1899*, and hence did not mention the Merrill claim in his original bill, *for that reason*, he cannot be charged with laches, as the claims enumerated in his original bill had been collected in 1899, only a few months before the filing of the bill.

It would seem that this is an example of an excuse being somewhat worse than the offense.

Because Cummings did not know in September, 1899, what he ought to have known—what it was his legal and moral *duty* to have known—in 1891 and 1892, because he neglected the interests of his ward which he had sworn to guard and protect, he alleges that he was not guilty of laches, because, forsooth, laches did not appear on the face of the original bill, but was left to appear later in the evidence and in the assertion of what may be termed a supplemental claim. If this is not a glaring instance of one seeking to profit by his own wrong, by his own failure to perform a legal duty when it ought to have been performed, then it is hard to imagine such an instance.

Again, on page 43 of his brief, appellee claims that if any payment was made by Moyers to Edmonds in 1892, it was made merely in payment of Edmonds' half interest in the Merrill fee of $407.50 (not $470.50, as stated by appellee). See Auditor's report, p. 212, Record.

Let us examine the reasonableness of this contention.

The report of the auditor (pp. 213-214, Record) shows that *prior* to collection of the Merrill claim, Moyers had advanced Edmonds upwards of $500.00, or *more than the entire Merrill fee*. Is it likely, then, that Moyers was paying Edmonds the lump sum of $500 in August, 1892, in settlement of a claim wherein Edmonds' half interest would

have been only $203.75, thereby making an aggregate, as reported by the auditor, of $1,470.00, paid to Edmonds? It is obviously absurd, on its face.

The theory of attempted purchase by Moyers is the only possible one which can account for the last payment by Moyers to Edmonds, of $500.00.

On page 44 of his brief, appellee says that until 1899, there was nothing for which Moyers could be called upon to account, arguing that hence there could be no laches on account of failure to make a demand at an earlier date.

It is true that in the light of the partnership *accounting*, it appears that Moyers had paid to Edmonds about seven times what would have been due him out of the only claim then collected, but that was something that *Cummings did not know* during his long period of silent acquiescence in Moyers' labors, so that this fact cannot be said to have influenced Cummings in the slightest in his silence and failure to make known his claim of right in the premises.

Cummings *could not have known* that Edmonds had no balance coming to him from Moyers save by asking Moyers for an accounting, and had he done that, which he was in duty bound to do, Moyers could and indubitably would, have then been placed on his guard and would have been in a position to exercise his right of doing one of two things, i. e., either have instantly declared the partnership dissolved by Edmonds' adjudged insanity, or else, as a measure of extreme precaution, have filed a bill to secure a formal decree of dissolution.

It simply comes back to the proposition before suggested, that Moyers was misled to his injury by Cummings' failure to perform his plain legal duty in the matter. There is no way of avoiding that conclusion.

In conclusion it is submitted that appellee has adduced

nothing in the way of citation of authorities or evidence which weakens in any degree the force of appellants' contentions, and that a due regard for established principles of equity and justice require a reversal of the decree from which appeal has been taken.

Respectfully submitted,

A. S. WORTHINGTON,
CHAS. F. CONSAUL,
IDA M. MOYERS,
Solicitors for Appellants.

CONSAUL ET AL, ADMINISTRATORS OF MOYERS, *v.* CUMMINGS, ADMINISTRATOR OF EDMONDS.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

No. 38. Argued November 6, 1911.—Decided December 11, 1911.

The law implies equality between partners and does not favor claims of the survivor for services rendered after dissolution of the firm and which lead to efforts to prove disparity.

Each partner is bound to devote himself to the firm's business and there is no implied obligation on the part of the other partners to pay him more than his proportion for performing his duty; and this rule applies to a surviving partner completing the business of the firm.

While equity at times makes exceptions to the general rule that a surviving partner is not allowed compensation for winding up the affairs of the copartnership, this case does not fall within such exceptions.

A limited partnership formed by two lawyers to prosecute claims against the Government, one of whom had already secured the claims and the other of whom was to attend to the prosecution, *held* not to be one in which either the lunacy or death of the former would amount to a dissolution or entitle the survivor to extra compensation for prosecuting the claims after such events to a successful conclusion, the partnership gains being payable *in solido* and dependent upon success, and the record showing that the deceased partner did not at any time aid materially in the prosecution of the claims and was not expected to.

A surviving partner of a law firm prosecuting claims under powers of attorney from the claimants to the deceased partner cannot retain the business individually and claim that the powers to the deceased partner were revoked by his death; he must account to the representatives of the deceased partner for his share of the fees.

If the defendant should have previously accounted, but wantonly refused or neglected so to do, interest is properly chargeable from the filing of the bill.

If a defendant did not except to a ruling fixing a date for calculating interest on an account, and asked to be allowed interest on advances from the same date, he is deemed to have acquiesced in the ruling, and cannot complain of it in this court.

A curator and administrator of a deceased member of a partnership, who has no power of sale, is not chargeable with laches because he waits until the surviving partner has realized the assets of the copartnership before demanding an account. The interests of his ward and intestate are founded in contract and cannot be destroyed by mere non-action.

33 App. D. C. 132, affirmed.

THE facts in these cases are fully set out in the decisions on the various appeals reported in 17 App. D. C. 269; 24 Id. 36; 30 Id. 540; 33 Id. 132. Only what is material to an understanding of the assignments of error need be now stated.

George B. Edmonds was an attorney in Washington, practicing in the Court of Claims. Under agreements to pay contingent fees, and giving him power of substitution, he represented a large number of clients, who had claims pending in that court and before Congress. A schedule was attached to a contract made in 1888 by Edmonds with Gilbert Moyers, also an attorney, in which they agreed "as special partners to prosecute these claims in Congress and before the court." The fees and expenses were to be equally divided. Edmonds also stipulated therein that said "Moyers shall represent and be associated with me in the prosecution of the said claims as joint attorney of record."

Edmonds was adjudged a lunatic in 1891, and Cummings was appointed his committee. There had only been a few collections, and most of the claims were still pending at the time of Edmonds' death in 1896. By virtue of appropriations made in March, 1899, Moyers collected a large amount in May, 1899. Cummings made a demand on him for a settlement, and Moyers several times promised to make a statement, explaining that the delay

was caused by bad health. Nothing having been done, Cummings was appointed administrator of Edmonds on August 22, 1899, and on September 16, 1899, filed a bill for an accounting. Among other things Moyers, in his answer, claimed that Edmonds, in consideration of money advanced by him in ignorance of the lunacy proceedings, had conveyed to Moyers all his interest in the fees that might be collected. This transfer he claimed operated as a dissolution of the firm. The court ordered an accounting; Moyers appealed. That decree having been affirmed, the case was referred to a master. He found that Edmonds had not sold his interest in the fees and that the partnership had not been dissolved, but allowed Moyers credit for the amount advanced in 1892. He found that the fees earned aggregated about $26,000, and after deducting the expenses and allowing Moyers credit for the advances, found balance in favor of complainant, with interest thereon, from September 16, 1899, the date Moyers should have accounted. Moyers on the appeal offered no objection to this award of interest, but claimed that under the same rule interest should have been allowed him on the advances made in 1892. The Court of Appeals sustained this view, and directed that in restating the account interest should be allowed Moyers on these advances from, say, January, 1893, to September 16, 1899. On a subsequent hearing the account was thus restated. On a later appeal the court held that, as Moyers had taken no exception, this ruling was conclusive. The court also held that Moyers was entitled to credit for expenses advanced in claims which were finally disallowed by the court.

During the litigation other claims were pending in the Court of Claims. But in view of the controversy over the fees Moyers abandoned some of them, and on his advice a few of the claims were put in the hands of attorneys associated with Moyers in business. They made collection, but the master charged Moyers with the proportion of the

fees thereon due Edmonds under the original contract. Other claims were withdrawn by clients and placed with attorneys not connected with Moyers in business. Congress passed additional acts of appropriation, by virtue of which some of the other claims in the schedule were collected. These items were included in the master's final statement of account. This was approved by the chancellor and affirmed on appeal. The case is here on numerous assignments of error, all of which have been abandoned except those in which Moyers' administrators claim that (1) he should have been allowed compensation for services after the dissolution of the firm; (2) that he should not have been charged with interest from September 16, 1899, but only from the final decree of November, 1908, when for the first time the amount due was made certain, and (3) the refusal to dismiss the bill on the ground of complainant's laches.

Mr. A. S. Worthington and *Mr. Charles F. Consaul*, with whom *Miss Ida N. Moyers* was on the brief, for appellants:

The special partnership agreement between Moyers and Edmonds was dissolved either by the adjudicated insanity of Edmonds, in 1891, or by his death, in 1896, and the utmost measure of recovery by the estate of Edmonds would be one-half the reasonable value of services rendered by the special partnership prior to such dissolution of the special partnership, less one-half partnership expenses incurred and less advances made by Moyers to Edmonds.

The death of a partner dissolves a partnership. *Scholefield* v. *Eichelberger*, 7 Pet. 586; *Burwell* v. *Cawood*, 2 How. 560, 576. See also to same effect *Davies* v. *Christian*, 15 Gratt. (Va.) 11; *Gratz* v. *Bayard*, 11 S. & R. (Pa.) 41; *Knapp* v. *McBride*, 7 Alabama, 19; *Goodburn* v. *Stevens*, 5 Gill (Md.), 1; *Williamson* v. *Wilson*, 1 Bland (Md.), 418; *Griswold* v. *Waddington*, 15 Johns. (N. Y.) 82; *White*

v. *Union Ins. Co.*, 1 N. & McC. (S. C.) 559; Story on Partnership, 7th ed., § 317; Parsons on Partnership, 4th ed., § 342; *Ames* v. *Downing*, 1 Bradf. (N. Y.) 321.

The surviving partner is entitled to compensation for special services rendered in realizing the assets of the partnership after dissolution. *Babbitt* v. *Riddell*, 1 Grant's Cases (Pa.), 161; *Justice* v. *Lairy*, 19 Ind. App. 272, 277; *Denver* v. *Roane*, 99 U. S. 355; *Starr* v. *Case*, 59 Iowa, 491; *Rowell* v. *Rowell*, 122 Wisconsin, 1, 24; *Lamb* v. *Wilson*, 3 Nebraska (Unoff.), 496, 505; 98 N. W. Rep. 37; *Vanduzer* v. *McMillan*, 37 Georgia, 299. See also *Newell* v. *Humphrey*, 37 Vermont, 265, 270; *Royster* v. *Johnson*, 73 N. Car. 474; *Zell's Appeal*, 126 Pa. St. 329, 333; *Maynard* v. *Richards*, 166 Illinois, 466; Bates on Partnership, § 773; *Schenkl* v. *Dana*, 118 Massachusetts, 236, citing *Willett* v. *Blanford*, 1 Hare, 253; Lindley on Part., 3d ed., 1034 *et seq.*; Story on Part., 6th ed., §§ 322, 343, 350; *Cameron* v. *Francisco*, 26 Oh. St. 190; *Thayer* v. *Badger*, 171 Massachusetts, 279, citing *Turnball* v. *Pomeroy*, 140 Massachusetts, 117; *Robinson* v. *Simmons*, 146 Massachusetts, 167, 176.

When Edmonds died he had no capital invested in the partnership business. His powers of attorney and fee contracts were revoked and nullified by his death. The capital could not consist of his services because he was dead and could render no services. His estate never rendered any services, after his death, so his estate had nothing in the partnership or its earnings after his death. *Condon* v. *Callahan*, 115 Tennessee, 285, 291, citing *Brown* v. *Tastet*, 1 Jacob, 284; *Cameron* v. *Francisco*, 26 Oh. St. 190; *Newell* v. *Humphrey*, 37 Vermont, 265.

If the surviving partner in a commercial partnership happened to be a lawyer, and if, in order to realize on firm assets, he had to bring suits and conduct them as an attorney at law, he would be entitled to charge the same commission as any other lawyer would have charged.

And see where this court intimates that in winding up partnerships between lawyers and other professional men, where the profits of the firm are the result solely of professional skill and labor, the surviving partner may be entitled to compensation. *Denver* v. *Roane*, 99 U. S. 355; *Sterne* v. *Goep*, 20 Hun, 397; *Osment* v. *McElrath*, 68 California, 466.

As Edmonds' authority, conferred by powers of attorney, died when Edmonds died, there remained no authority vested either in Edmonds or his employé, Moyers, to further proceed with his claims. Therefore Moyers after the death of Edmonds acted under direct employment by the claimants.

Any relation of employer and employé existing between Edmonds and Moyers terminated at the death of Edmonds; Mecham on Agency, § 249; and see *Gage* v. *Allison*, 2 Am. Dec. 682; *Merrick's Est.*, 8 Watts & Serg. (Pa.) 402; *Adriance* v. *Rutherford*, 57 Michigan, 170.

It was error to allow any interest to the Edmonds' estate on any sum found to be due as the result of the proceedings had, from a date prior to the entering of the final decree pursuant to the mandate of this court.

Interest is not properly allowable on running or open account or on accounts which are unliquidated, or concerning which there is an honest dispute between the parties, and is not usually allowable on partnership accountings until a balance has been struck. *Gyger's Appeal*, 62 Pa. St. 73; *Clark* v. *Clark*, 46 Connecticut, 586; *Imperial Hotel Co.* v. *Claflin Co.*, 175 Illinois, 119, 124; *Pieser* v. *Minkota Milling Co.*, 94 Ill. App. 595; *Henderson Cotton Mfg Co.* v. *Lowell Machine Shop*, 86 Kentucky, 668; *Sweeney* v. *Neely*, 53 Michigan, 421; *Houston* v. *Crutcher*, 31 Mississippi, 51; *Holden* v. *Peace*, 39 N. Car. 223; *Dexter* v. *Arnold*, 3 Massachusetts, 284; *Pengra* v. *Wheeler*, 24 Oregon, 532; *Grubb's Appeal*, 66 Pa. St. 117; *Stearns* v. *Mason*, 24 Gratt. 484; *South Carolina* v. *Port Royal R. R.*

Co., 89 Fed. Rep. 565, 574; *Haskell* v. *Vaughan*, 5 Sneed (Tenn.), 618.

A partner cannot be heard to allege that the other partner owed him anything, after dissolution, until there has been a "general settlement," which means the striking of a balance. *Rogers* v. *Yarnell*, 51 Arkansas, 198; *Heald* v. *Handy*, 89 California, 632; *Raymond Bros.* v. *Williams & Chapman*, 40 Iowa, 117; *Williams* v. *Hersey*, 17 Kansas, 18; *Ory* v. *Winter*, 6 Mart. N. S. (La.) 606; *Flannery* v. *Anderson*, 4 Nevada, 437; *Edwards* v. *Dargan*, 30 S. Car. 177; *Stamps* v. *Tenn. Co.*, 59 S. W. Rep. (Tenn.) 769; and in *Ryan Drug Co.* v. *Hvambsahl*, 92 Wisconsin, 62; interest was allowed, but on the theory that the accounts should be deemed "accounts stated," concerning which there was no dispute between the parties.

The bill should have been dismissed for lack of equity in view of the obvious laches of the complainant. *Baker* v. *Cummings*, 169 U. S. 189.

The silence of Edmonds' representative which extended over the period beginning with January 31, 1891, and ending in the spring of 1899—over eight years—operated to the great prejudice of Moyers; operated in its real effect, according to the courts below, to cause Moyers to carry with him as a partner, the lunatic up to 1896, and the decedent after that date. This is surely unconscionable, and should not be permitted by a court of equity. *Abraham* v. *Ordway*, 158 U. S. 416, 421; *McKnight* v. *Taylor*, 1 How. 161. See also *Cholmondeley* v. *Clinton*, 2 Jac. & Walk. 1; *Kane* v. *Bloodgood*, 7 Johns. Ch. Rep. 93; *Decouche* v. *Saratiere*, 3 Johns. Ch. Rep. 190; *Prevost* v. *Gratz*, 6 Wheat. 481; *Hughes* v. *Edwards*, 9 Wheat. 489; *Willison* v. *Matthews*, 3 Pet. 44; *Miller* v. *McIntire*, 6 Pet. 61, 66; *Bowman* v. *Wathen*, 1 How. 189.

Moyers, as surviving partner, after such a lapse of time cannot even be charged as trustee if he were one. *Badger* v. *Badger*, 2 Wall. 87, 96; *Norris* v. *Haggin*, 136 U. S. 386.

When a party relies on ignorance of facts material to his rights as an excuse for laches or delay in asserting them, he must show *why* he was so long ignorant, and acquit himself of all knowledge of facts which would even put him on inquiry. *Badger* v. *Badger*, 2 Wall. 87; *Stearns* v. *Page*, 7 How. 819; *Ware* v. *Galveston City Co.*, 146 U. S. 102; *Moore* v. *Greene*, 19 How. 69; *Beaubien* v. *Beaubien*, 23 How. 190; *New Albany* v. *Burke*, 11 Wall. 107; *Foster* v. *Mansfield &c. R. Co.*, 146 U. S. 88; *Godden* v. *Kimmell*, 99 U. S. 201; *Wood* v. *Carpenter*, 101 U. S. 135; *Hardt* v. *Heidweyer*, 152 U. S. 547; *Hammond* v. *Hopkins*, 143 U. S. 224.

Mr. Charles Cowles Tucker, with whom *Mr. J. Miller Kenyon* was on the brief, for appellee.

Mr. Justice Lamar, after making the foregoing statement, delivered the opinion of the court.

In this accounting of the affairs of a special partnership between attorneys at law, the survivor claims compensation for services rendered after dissolution of the firm.

Claims of this sort are not favored. They lead to efforts to prove a disparity between the partners, when the law implies equality. They necessitate a balancing of the value of the work of each in securing the business and earning the profits, as well as a comparison of the time they may spend on the matters under consideration. Each partner is bound to devote himself to the firm's business, and there is no implied obligation that for performing this duty he should be paid more than his proportionate share of the gains. Neglect by one to do his part may be of such character as to justify a dissolution. But as long as the firm continues there is usually no deduction because one partner has not been as active as the other. The same is true where death prevents either of the part-

ners from performing his contract. The law did not permit him to appoint a substitute, nor can his personal representative, no matter how well qualified, assist in winding up the affairs of the firm. Whether that be considered a right or duty, it is in either event cast on the survivor. In performing it he only carries out an obligation implied in the partnership relation, and is therefore entitled to no compensation for thus doing what he was bound to do and what would have been imposed on the other had the order of their death been different. To allow the survivor compensation wherever he continues the business would be to offer an inducement to delay the settlement which ought to be made as soon as possible.

To this general rule there are exceptions, where, under peculiar circumstances, the principles of equity entitle the survivor to compensation. *Thayer* v. *Badger, Admr.*, 171 Massachusetts, 279. Thus, where by authority of law, or under a power in the will, the personal representative consents that the business may be continued by the survivor, the estate must pay for such additional services. Or, where without such consent, and at his own risk, the survivor continues the business and makes a profit, the estate is bound to allow reasonable compensation if it elects to share in the gains thus made.

So where a member of a firm, by his voluntary act, dissolved the partnership the partner who continued the business was allowed compensation for performing services in which he had the right to have expected the continued assistance of the other. Extra compensation has also been allowed in a few cases where, in order to realize on the assets, it was absolutely necessary for the survivor to continue the business beyond the reasonable time allowed for winding up its affairs. See *Justice* v. *Lairy*, 19 Ind. App. 272; *Zell's Appeal*, 126 Pa. St. 329; *Schenkl* v. *Dana*, 118 Massachusetts, 236; *Gray* v. *Hamil*, 82 Georgia, 375; *Beatty* v. *Wray*, 19 Pa. St. 516; *Cameron* v. *Francisco*,

26 Oh. St. 190; *Robinson* v. *Simmons*, 146 Massachusetts, 167; *Holmes* v. *Higgins*, 1 Barn. & C. 74. Then, too, there is a suggestion in *Denver* v. *Roane*, 99 U. S. 355, 359, that there may be "a different rule to cases of winding up partnerships between lawyers and other professional men, where the profits of the firm are the result solely of professional skill and labor."

This point is not involved and on it no ruling is made, because we are not dealing with questions between the administrator of the deceased and the surviving member of an ordinary law partnership, where the latter conducts to a conclusion the business of the firm, under circumstance, where there may be a right from time to time to call on the client for compensation for the value of services rendered and even though the case is finally lost. Here the agreement related solely to litigation in which compensation was for success and not for the value of services rendered. Such payment was to be *in solido*, and the partners agreed that the fees should be divided *in solido*.

Moyers insists, however, that the peculiar facts of this case bring him within the other exceptions pointed out above; that when Edmonds was adjudged a lunatic, in 1891, the firm was dissolved; that with the knowledge of Cummings, who was acting as Edmonds' committee, Moyers continued to prosecute the claims, paid out large sums for necessary expenses, and, in spite of probable failure, rendered valuable services, which finally earned the fees now to be divided. He claims that in equity and good conscience he should be paid reasonable compensation for this work, in which Edmonds rendered no assistance.

Moyers put in his services against the claims turned over to the firm by Edmonds, who stipulated that Moyers should *represent* him, and to that end "be associated in the prosecution of the claims as joint attorney of record." Edmonds rendered little or no assistance and apparently was not expected to do so, for Moyers himself testified that

the contract was "an employment of me to attend to certain business for him in the Court of Claims in regard to certain cases. It might be styled a limited partnership. It was not a general partnership." In prosecuting the claims and collecting the money Moyers therefore only did what he contracted to do, and is not entitled to compensation beyond that set out in the agreement. That these services extended over a long period does not increase his share nor lessen Edmonds' interest in the profits. Under the contract, Moyers agreed to prosecute the claims and could neither abandon them without just cause nor advise clients to put them in the hands of others. If he did so, he is chargeable with the fees which should have been earned by him under the articles of partnership. Neither can Edmonds' interest be diminished on the ground that the contract of employment by the client was revoked by his insanity or death. They made no such objection and apparently acquiesced in Edmonds' arrangement by which they were put in the hands of Moyers. The survivor cannot retain the business thus coming to him by virtue of a contract with Edmonds without accounting for his share of the fees.

Moyers was charged with interest on the balance due from September 16, 1899, when the suit was filed, being the date on which the master found he should have accounted with the complainant. Moyers contends that what, if anything, was due was uncertain; that it required numerous references in order to properly state the account; that it was not liquidated until the final decree in November, 1908, when, for the first time, the true balance was ascertained, and hence that interest should only run from that date. Interest is allowed by way of damages for failure to pay money when it is due and frequently is not allowed except from the time the amount to be paid has been definitely ascertained. But there are many cases in which interest is charged from a prior date. Here the de-

fendant at first promised to make a statement, then contended, without substantial support, that the partnership was dissolved because Edmonds had transferred his interest in the fees. He resisted the accounting, failed to produce books, vouchers and statements proper to be kept by a surviving partner. As the Court of Appeals said, the delay and difficulty in reaching a conclusion was largely due to his failure to keep proper books. Under the circumstances the master properly allowed interest from the date the bill was filed. *Spalding* v. *Moser*, 161 U. S. 375; *Nashua & Lowell R. Corp.* v. *Boston &c. R. R.*, 61 Fed. Rep. 237, 247. Moyers did not except to this method of calculating interest; on the contrary, he obtained a ruling that on the same basis he should be allowed interest from 1892 on advances then made by him to Edmonds. He cannot now complain that the account was stated in accordance with a rule in which he acquiesced, and the benefit of which he invoked.

In the last assignment, it is alleged that the court erred in not dismissing the bill because of complainant's laches in filing it. It is contended that after Cummings was appointed committee of Edmonds in 1891, he knew of the contract of special partnership and that Moyers was prosecuting these claims, and not only made no demand for a settlement, but permitted Moyers to do all the work, incur all of the expense, and run all of the risks, without notifying him that Edmonds' representative would claim one-half of the profits. It is urged that such conduct was inequitable and that to wait until eight years before filing proceedings constituted laches which requires a dismissal of the bill. We find nothing in the facts or in the relation of the parties that made it incumbent on Cummings to warn Moyers of Edmonds' claim, even if Cummings had the full knowledge of all the facts which is necessary to raise any such obligation. Edmonds' right was rooted in the contract, and has only been enforced in pursuance

of its terms. Cummings had no title to Edmonds' property, but was a mere curator, with limited powers. He could not have sold Edmonds' interest in these claims to Moyers or anyone else without an order of court. For a much stronger reason he could not accomplish the same result and destroy Edmonds' right therein by a mere non-action. The fees were not collected until the spring of 1899, and within four months thereafter the bill for an accounting was filed.

The decree is

Affirmed.